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# HISTORY OF THE PATENT SYSTEM

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## HEARINGS

BEFORE THE

## COMMITTEE ON PATENTS

U.S. HOUSE OF REPRESENTATIVES

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## HEARINGS BEFORE COMMITTEE ON PATENTS.

COMMITTEE ON PATENTS, HOUSE OF REPRESENTATIVES,  
*Wednesday, January 10, 1912.*

The committee met at 10 o'clock a. m.

Present: Messrs. Oldfield (chairman), Webb, Alexander, Bulkley, Witherspoon, Wilson, Lenroot, and Wilder.

Present also: Hon. Edward B. Moore, Commissioner of Patents, and Mr. Frederick A. Tennant, Assistant Commissioner of Patents.

The CHAIRMAN. Will you proceed, Mr. Moore?

Mr. MOORE. Mr. Chairman, Mr. Tennant was going to read this paper, which we have already typewritten.

The CHAIRMAN. All right.

Mr. MOORE. And I would follow up and answer any questions that any members of the committee might wish to ask, and if we had time, according to the length of the session, I would go on with the subject of foreign patents and how they compare with ours, and inasmuch as there are several new members on this committee I thought possibly it would be well to go through this preliminary step to give them a general idea of how the patent system has come to be what it is, and then at some future meeting—at any time you choose—we would suggest what is necessary, in our opinion.

The CHAIRMAN. Yes.

Mr. MOORE. And submit it to the committee for what it might think it to be worth.

The CHAIRMAN. All right; that is perfectly satisfactory.

Mr. MOORE. This is a sort of a history from the beginning, when the patents were signed by the President and discussed in the cabinet.

The CHAIRMAN. Very well, Mr. Tennant; you need not stand unless you desire to.

### STATEMENT OF MR. FREDERICK A. TENNANT, ASSISTANT COMMISSIONER OF PATENTS.

Mr. TENNANT. Thank you, Mr. Chairman. I will remain seated, if you please.

I have compiled a short history of the patent system from the date of its inception down to the present time, taken mainly from publications which have been prepared in the office or by some members of the office and which have become so scarce that we have only a single copy of each left, so we could not furnish the entire book to the committee at the present time.

The patent laws, as you know, are founded upon this article of the Constitution:

The Congress shall have power \* \* \* to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

The patent system was taken very largely from the British patent system, and the colonies at one time granted patents upon certain inventions which had then been made. I think there were quite a number of such patents granted. (Reading:)

"The American patent system was founded by the act of April 10, 1790, the bill being inspired and urged by Thomas Jefferson, then Secretary of State, who had seen during his residence abroad the encouragement and protection extended by other countries to inventive skill and industry, and the exclusive privileges that were granted to the producing of things new and useful in art, science, literature, and mechanics.

"The act of 1790 embodied, or was supposed to possess, the best features of the systems of Europe, although English theories were more specifically considered. This bill constituted a tribunal of three, consisting of the Secretary of State, the Secretary of War, and the Attorney General, who were authorized and empowered 'to grant patents for any such useful art, manufacture, engine, machine, or device as they should deem sufficiently useful and important.' The last clause in the act was held to give the board authority to refuse patents for want of novelty of invention or insufficiency of utility or importance, and this power was vigorously exercised. The first Board of Commissioners consisted of Thomas Jefferson, Secretary of State; Henry Knox, of Massachusetts, Secretary of War; and Edmund Randolph, of Virginia, Attorney General, and so carefully and critically did they perform their duty, rigidly scrutinizing each point of the specifications and claims, that most of the applications failed to receive their distinguished approval, and during the first year only three patents were granted.

"This original patent law limited the life of a patent to 14 years, and there was no provision for an extension. It required that 'a written specification be filed with the Secretary of State, containing a description of the article desired to be patented, accompanied with draft or model and explanations and models.' It also required that the specification should be so particular and the models so exact as not only to distinguish the inventions or discovery from other things before known and used, but also to enable a workman or other person skilled in the art or manufacture whereof it is a branch, or whereunto it may be nearest connected, to make, construct, or use the same, to the end that the public may have the full benefit thereof after the expiration of the patent term."

Now, that section of the statute is substantially identical with section 4888 of the present Revised Statutes, and it is interesting to note that the particular matter which I have quoted has run through the patent laws from their inception to the present time. Section 4888 at present provides [reading]:

SEC. 4888. Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim

the part, improvement, or combination which he claims as his invention or discovery. The specification and claim shall be signed by the inventor and attested by two witnesses.

The CHAIRMAN. What does that two years mean there, Mr. Tennant? Can you illustrate it? That has always been not quite clear to me.

Mr. TENNANT. The two years' bar as to use, sale, and publication, do you mean?

The CHAIRMAN. Yes.

Mr. TENNANT. That is a creature of the statute which is intended, I think, to hurry people up and have them make their application for invention within a reasonable time after the invention has been put upon the market, in order that the public may not be deprived unreasonably of the use of an invention which had come into public use and which was thereafter to be covered by patent. (Reading:)

"The Secretary of State was also directed to furnish copies of any specification and to permit any model to be copied on application. Provision was made for the repeal of any patent obtained surreptitiously or by false suggestion, but no remedy was given for interfering applications. The law was very defective, as are nearly all initial measures, but it was the starting point of our patent system, and it has therefore been necessary to speak of its provisions somewhat at length.

"The tribunal which controlled the examination and granting of patents under this act of 1790 was absolute in its authority, and there was no appeal from its decision. The severity of its scrutiny and the strictness with which it exercised its power caused great dissatisfaction, and inventors complained that the three officers composing the board were not in sympathy with those whom the law under which they acted was designed to benefit; that, on the contrary, they were by education and interest hostile to the industrial classes.

"Consequently, in 1793 another act was passed which destroyed this power of revision and rejection which the first tribunal had so rigidly enforced.

"The first act of 1790 made no distinction between citizens of the United States and aliens as to their rights under the patent law, but by the act of 1793 persons not citizens of the United States could not obtain patents. This was amended, however, by an act passed April 17, 1802, so as to give aliens who had resided in this country for two years the same rights as citizens, provided they submitted an affidavit declaring their intention to become citizens. The general construction of the act of 1793 was much the same as that of 1790, except that there was no power of rejection and that to the Secretary of State alone was given the duty of granting patents. The certificate of the Attorney General as to the correctness of the forms and the signature of the President were still required. There was a provision by which interfering applications should be determined by a board of arbitration, one of which should be chosen by each of the applications and one by the Secretary of State."

So, you will see, there were interferences between applications for patents as far back as 1802. There were probably very few at that time, but at the present time we are declaring about 30 interferences a week. (Reading:)

"The decision of this tribunal was to be final, and if either party refused to go into arbitration the patent was granted to the opposing party.

"For 12 years, from 1790 to 1802, the entire work of the Patent Office was performed by a single clerk in the State Department, and all the records did not fill over a dozen pigeonholes. In 1802 Dr. Thornton, a gentleman of scientific attainments, was appointed by Mr. Jefferson "Superintendent" of the Patent Office, and for 26 years he exercised autocratic control of its affairs.

\* \* \* \* \*

"A story is told of him that, during the War of 1812, when the British captured the city of Washington and destroyed the Capitol Building, a loaded cannon was trained upon the Patent Office for the purpose of destroying it, and he is said to have put himself before the gun, and in a frenzy of excitement exclaimed: 'Are you Englishmen or only Goths and Vandals? This is the Patent Office, a depository of the ingenuity of the American Nation, in which the whole civilized world is interested. Would you destroy it? If so, fire away, and let the charge pass through my body.' The effect is said to have been magical upon the soldiers, and to have saved the Patent Office from destruction."

Mr. MOORE. I would say right there that the Patent Office was then located in E street, near where the present structure is, and this old gentleman, who was a great friend of Washington's, stood on the little wooden portico and delivered that speech. The answer of the commanded general is lost in oblivion, but at all events that is the only building, so far as we know, that was not destroyed at that time.

Mr. TENNANT. (Reading:) "After Dr. Thornton's death Mr. Jones was Superintendent of the Patent Office for two years, from 1828 to 1830, when he was succeeded by Dr. J. D. Craig, who remained in office until 1836.

\* \* \* \* \*

"The rapidity of the growth of the Patent Office and the interest that was taken by the country in its progress is illustrated by the fact that on April 28, 1810, Congress passed an act authorizing the President to erect or procure by purchase a building suitable for the accommodation of the 'General Post Office and of the Keeper of the Patents,' in such situation and finished in such manner as the interests of the United States and the safety and convenience of these respective officers, and the arrangement of the models in the Patent Office, should, in his opinion, require. The sum of \$20,000 was appropriated for the purposes expressed in the act, and a building purchased on the site now occupied by the old Post Office Department.

\* \* \* \* \*

"The law reorganizing the Patent Office and inaugurating practically the system under which its operations are now conducted was approved July 4, 1836. Many changes have, of course, since been made, as the increase of the business and force demanded, but this law laid the foundation for the business of the office, the accountability of its officers, the careful scrutiny of the novelty and usefulness of alleged inventions and the adjustment of fees.

"Though the office was still combined with and attached to the Department of State, it was made a separate bureau, and its chief

was given the designation of Commissioner of Patents, who was to be appointed by the President by and with the advice and consent of the Senate. A chief clerk was provided for, who was to have custody of the seal, records, and models of the office, and in the absence of the commissioner was to perform the duties of that officer. Both commissioner and chief clerk were required to give bonds for the faithful performance of their duties. The force which was then provided for the office consisted of one examining clerk at a salary of \$1,500 a year, whose duties were the same as those now performed by a principal examiner; two clerks at \$1,200 each, one at \$1,000, a machinist at \$1,250, and a messenger at \$700. Patents were to be issued for a term not exceeding 14 years, the fee being \$30, and an extension for seven years might be made upon payment of an additional \$30, provided the Secretary of State, the Commissioner of Patents, and the Solicitor of the Treasury, who were constituted a board to hear and decide upon evidence for or against the extension, should so decide.

"Perhaps the most important provision in this act of reorganization was that which insisted upon a careful and discriminating examination of every application for a patent, so that the duplication which had formerly been so frequent should not take place in future. As this was the groundwork of the intelligent issue of patents the section is given at length. It provided, 'that the commissioner shall make, or cause to be made, an examination of the new invention or discovery, and if on any such examination it shall not appear to the commissioner that the same had been invented or discovered by any other person in this country prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale with the applicant's consent or allowance prior to the application, if the commissioner shall deem it to be sufficiently useful and important it shall be his duty to issue a patent therefor. But whenever, on such examination, it shall appear to the commission that the applicant was not the original and first inventor or discoverer thereof, or that any part of that which is claimed as new had been invented or discovered or patented or described in any printed publication in this or any foreign country, as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him briefly such information and references as may be useful in judging of the propriety of renewing his application or altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinquishing his claim to the model, he shall be entitled to receive back \$20, part of the duty required by this act, on filing a notice in writing of such election in the Patent Office, a copy of which, certified by the commissioner, shall be a sufficient warrant to the Treasurer for paying back to the said applicant the said sum of \$20. But if the applicant in such case shall persist in his claim for a patent, with or without any alteration of his specification, he shall be required to make oath or affirmation anew in manner as aforesaid; and if the specification and claim shall not have been so modified as in the opinion of the commissioner shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of a board of examiners, to be com-

posed of three disinterested persons, who shall be appointed for the purpose by the Secretary of State, one of whom at least to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains, who shall be under oath or affirmation for the faithful performance of the duty imposed upon them by said appointment.'

"This board was to be furnished with a written opinion of the commissioner stating the particular grounds of his objection and the part or parts of the invention which he did not deem entitled to be patented. Then the board were to give notice to the applicant as well as to the commissioner of the time and place of their meeting, so that both could have opportunity of presenting such facts and evidence as they might deem necessary. The commissioner was required to furnish the board of examiners such information as he might possess, and they had power to reverse, either in whole or in part, the commissioner's decision and certify their opinion to that officer.

"This method of procedure in case of appeal from the primary examiner remained in force for a quarter of a century when, on March 2, 1861, Congress created a tribunal consisting of three persons to be known as examiners in chief. The office practice had previously been to detail three examiners to perform the work devolving upon the new board, though persons not connected with the office had been called upon to act as judges in an appeal case. No appeal fee was then required, but under an act passed in June, 1866, a fee of \$10 was imposed. An appeal from this board was allowed to the commissioner in person on payment of \$20. An appeal could not be taken from an examiner, except in interferences cases, until after the application had been twice rejected, and the second examination was not to be given until the applicant renewed the oath. The act of March 2, 1861, also provided that no money paid as a fee on any application for a patent, after the passage of the act, should be withdrawn or refunded; nor should the fee paid on the filing of a caveat be considered as a part of the fee on filing a subsequent application for the same invention. The right to annex to a patent the specification of additional improvements was also repealed by this act. The right to withdraw the fee was given to American applicants by the act of 1836 and was extended to foreigners by the act of 1837. The right of having a caveat fee applied as part of the sum to be paid upon a subsequent application was given by the act of 1836. By the act of 1861, also, all the office fees were revised and substantially the present rates established.

"It was also enacted that applications must be prepared for examination within two years after the filing of the petition, and in default thereof they were to be regarded as abandoned, unless it were shown to the satisfaction of the commissioner that such delay was unavoidable. Previous to this an applicant might suit his own pleasure and interest as to the time when he would complete his application for examination. By the same act the term of all patents was fixed at 17 years; all extensions of patents were prohibited.

"The commissioner was authorized to print 10 copies of the specification and drawing of all patents thereafter issued. Prior to this the copies were made by tracing or drawing."

The CHAIRMAN. The last patent was extended in 1861?

Mr. TENNANT. Except those extended by special acts of Congress. There have been four patents extended by act of Congress, and the last one of those was extended in 1887 or 1888—none since that time. By section 3 of an act passed March 3, 1863, it was enacted (reading):

That every patent shall be dated of a day not later than six months after the time at which it was passed and allowed and notice thereof sent to the applicant. And if the final fee be not paid within the six months, the patent shall be withheld and the invention become public property as against the applicant.

The CHAIRMAN. That is the law now, is it not?

Mr. TENNANT. No; it becomes forfeited and may be renewed—I will come to that very shortly—and in this old act of 1863 the invention from which a patent was withheld became public property as against the applicant. Now, if a case is allowed and becomes abandoned and is never revived, the case is held in the secret archives of the Patent Office. They used to use the old applications—abandoned applications—of this character as references, but we have not for a good many years, as you will see a little later. (Reading:)

In this act, also, the requirement as to a renewal of the oath, when on a first rejection the applicant shall persist in his claim, under the act of 1836, was repealed.

That is to say, under the old act of 1836, if a party desired to amend his application, he had to make the oath again asserting that he was the inventor of the particular thing which he claimed in the amended specifications. Under the act of 1863 this requirement of an oath every time an amendment was made was done away with, and his amended claims were held to be covered by the original oath, unless he presented matters which were outside of the original oath. If he had disclosed matter which he had not claimed and subsequently amended to claim such disclosed matter, they required, as we do now, a supplemental oath, to show that he now asserts under oath that that was his invention at the time he filed his application. (Reading:)

By an act of March, 1865, it was provided that any person having an interest in an invention for which a patent was ordered to issue upon payment of the final fee, as provided in section three of the act of 1863, but who had failed to make payment as provided in that act, should have the right to make an application for a patent for his invention the same as in the case of an original application, provided such application be made within two years after the date of the allowance of the original application.

That part of the statute is now in force; that is to say, if the applicant fails to pay the final fee and the patent does not issue, he may renew his application by merely the payment of another first or renewal fee any time within two years of the date of the allowance of his original application. If he waits longer than two years, he can not get a patent on that application at all. [Reading:]

“On July 8, 1870, an act was passed, revising, consolidating, and amending the statutes relating to patents and repealing the 25 acts and parts of acts, including such portions of the appropriation



bills as were applicable to the Patent Office, that had been enacted since the passage of the law of 1836.

"The law of 1870 added to the force of the office an assistant commissioner, and an examiner of interferences, whose office was to determine the question of priority of invention in interference cases. It gave the commissioner authority, subject to the approval of the Secretary of the Interior, to establish regulations for the conduct of proceedings in the office. As early as 1828 the office began to print for free distribution circulars containing information as to what the law relating to the issuing of patents was, and how to proceed to obtain a patent. These circulars were revised and enlarged from time to time, as various changes and additions were made in the law affecting the practice before the office. The information contained in them was divided into numbered sections and conveniently arranged under suitable headings. At length these circulars took the form of a pamphlet, which began to be called the Rules of Practice, but prior to the act of 1870 the rules did not have the force of law. The statute also authorized the commissioner to print copies of the claims of the current issues of patents, and of such laws, decisions, and rules as were necessary for the information of the public. Under this provision the office began to publish weekly a list giving the numbers, titles, and claims of the patents issued during the week immediately preceding, together with the names and residences of the patentees. In the commissioner's report for 1870 he recommended that the scope of the publication be enlarged so as to constitute an official gazette of the office. On January 3, 1872, the weekly list was first published under the name of the Official Gazette of the United States Patent Office. It then, however, embraced only the matters specified in the law of 1870; but in July, 1872, portions of the drawings were introduced to illustrate the claims in the patented cases. This enlargement was brought about in the following way: By a joint resolution of Congress, in January, 1871, the publication of the illustrated annual reports (commonly known as Patent Office Reports) was ordered to be discontinued and in lieu thereof the commissioner was directed to have printed for free distribution 150 copies of the complete specifications and drawings of each patent issued after July 1, 1869; but in May, 1872, Congress ordered this publication to be stopped, and at the same time made provision for illustrating the claims in the Official Gazette in the manner as above stated.

"The law of 1870 enacted that the thing or art for which a patent was sought must, in order to be patentable, be a new and useful invention, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country before the applicant's invention thereof, and not in public use or on sale for more than two years prior to the application, and not proved to have been abandoned. It also added a provision that upon the failure of an applicant to prosecute his application within two years after any action therein, the application would be regarded as abandoned, unless it was shown to the satisfaction of the commissioner that the failure to prosecute was unavoidable. Previous to this provision, after an action on the application by the Office, it might lie until it suited the applicant's leisure or interest to amend

or request a reexamination. In some instances applications were not called up for 10 or 12 years."

There has been some criticism lately about the length of time some applications of some large corporations have remained in the office. There is a bill now pending before the House (H. R. 8388), introduced by the chairman of this committee, curtailing the time in which amendment must be made, from 12 to 6 months. That is just in line with the previous legislation under the act of 1870, cutting it down from an unlimited time to two years, and the more recent act in cutting it down from two years to one year.

Mr. LENROOT. Did we report such a bill last year?

Mr. TENNANT. Yes, sir; you did; but it failed to pass. Although favorably reported by the committee it was not reached on the calendar.

Mr. LENROOT. Yes.

Mr. TENNANT. (Reading.)

"A model was not to be furnished unless the commissioner required it. This change was made principally because there was not sufficient room in the model halls to classify and arrange the models, and because of the further fact that there was a preponderating opinion that they were unnecessary."

I would state right here that while the old patent laws required a drawing as well as specifications, the drawings were in many instances crude and in a great many other instances were made in colors, painted really, so that when they came to reproduce the specifications and drawings for printing, under this act, it was almost impossible—it was practically impossible—to reproduce them in black and white, and they had to be all drawn over. Therefore, at that time, the models were useful not only for purposes of illustration, but because the drawings were so imperfect, that after they began to print copies of them, many drawings were required to be made in black and white from the models. The illustrations became more and more perfect, until finally they were better to examine the case from than the models themselves, and that is the main reason for discontinuing the requirement of models. At the present time we require models only when the nature of the case is such that we do not believe the invention is operative and require a demonstration of it, as, for instance, perpetual-motion machines, or where the disclosure—

Mr. WILSON. Are you still trifling with perpetual-motion machines?

Mr. MOORE. We do not take fees—simply send them a circular and ask them to furnish a working model, and that is the last we hear of it. We do not take the inventor's money at all.

Mr. WILSON. That is what I thought.

Mr. TENNANT. It is interesting to note that we used to require a model in all cases of application for patent for a man-carrying aeroplane, and those models were required until after the Wrights had demonstrated that they could fly, in 1903.

Mr. WILSON. You did?

Mr. TENNANT. That argument always comes back upon us in the matter of perpetual-motion machines.

Mr. MOORE. Subsequently, of course, a heavier-than-air flying machine became a practical thing and demonstrated and all that, in some particulars. They are, in some parts of the world, commercially suc-

cessful for carrying passengers, as are also the lighter-than-air machines. They now come back at us with that argument, but they have to "show us"—we are "from Missouri."

Mr. TENNANT (reading): "The development of the patent arts since 1870 has been exceedingly rapid and but few changes in the laws have been made since that time. In 1874, the patent statutes were incorporated into the codified and Revised Statutes of the United States and have thus remained since that time.

"In the judicial act of 1891 the court of appeals was given final jurisdiction in cases of suits for infringement of patents. By an act approved February 9, 1893, the Court of Appeals of the District of Columbia was established, and the determination of appeals from the decisions of the Commissioner of Patents, which was then vested in the general term of the Supreme Court of the District of Columbia, was transferred to the court of appeals by that act.

"In an act approved March 3, 1897, the patent law was amended to accord with and to put in force the provisions of the international convention which had been adhered to by the United States in 1887, but which was not rendered effective until the passage of this act. By this amendment patents which were granted to foreigners were given the full term of 17 years, whereas previously they had expired with the date of the earliest foreign patent for the same invention. The granting of the patent for the full period of 17 years required the application in the United States to be filed within seven months from the date of the earliest foreign application; otherwise no patent would be granted upon the invention."

That seven months was really six months, with one month beyond the seas in the international convention, but of course, so far as the United States was concerned, it was seven months in practically all cases. [Reading:]

"In this act the period within which an applicant was allowed to amend his application was cut down from two years to one year, thus facilitating the issuance of patents and curtailing the time in which applications could be held in the office by applicants who were unwilling to take out their patents until an industry based thereon had become well established."

There was also added to section 4921 of the Revised Statutes a limitation that "there shall be no recovery of profits or damages for any infringement committed more than six years before the filing of the bill of complaint or the issuing of the writ in such suit of action," and further that "this provision shall apply to existing causes of action." Provision was also made by which the head of a department of the Government might expedite the granting of patent by request, providing he be represented before the commissioner in order to prevent the improper issuance of the patent.

Those are patents for public improvements and patents which are about to be bought up by the Government, as improvements in naval lines, Army lines, in which they are anxious to get the patents before they begin to publicly manufacture the invention, and then the Secretary of the Navy or the Secretary of War will designate an officer to oversee the granting of the patent, and see that the applicant does not claim anything he is not entitled to, and to give an official status to the case before the Patent Office, in order that the commissioner may be justified under this law in taking the case up out of its turn.

Mr. MOORE. A great many requests come from the Department of Agriculture, as, for instance, the cholera cure, the building of roads.

Mr. WILSON. And sheep wash.

Mr. MOORE. Everything of that kind, if it is thought to be a good thing, and ask us to expedite the matter. Requests also come from the Post Office Department with regard to mail pouches and various appliances that they have in the postal service for increasing the rapidity of the delivery of mail in all its branches, all entirely relating to governmental uses.

Mr. TENNANT (reading):

"Under an act approved February 28, 1899, provision was made for the filing of applications for inventions made by insane inventors."

The CHAIRMAN. What?

Mr. TENNANT. For inventions made by insane inventors, the applications to be filed by the guardian of such insane persons. (Reading:)

"In 1902 section 4883 of the Revised Statutes was modified to provide that all patents shall be issued in the name of the United States under the seal of the Patent Office and signed by the Commissioner of Patents. Previous to that date they were required to be countersigned by the Secretary or the Assistant Secretary of the Interior."

That made a great deal of work for the Secretary to sign, in addition to the commissioner—some 700 to 1,000 patents a week. I do not know that they ran up quite as high as that in 1902, but they were up to about 500 at that time.

Mr. MOORE. They now run about 900—930 was the last. They unloaded that job from the Secretary onto the Assistant Secretary, and then the Assistant Secretary got busy and went up to Congress and got relieved of this duty. It was a very good thing, because the Secretary really has nothing to do with the issuance of patents.

Mr. TENNANT (reading):

"In 1903 the period in which foreign applicants were allowed to file an application in the United States after the filing of a foreign application was extended from 7 to 12 months to accord with the provisions of the International Convention for the Protection of Industrial Property as amended at Brussels in 1900. Further provisions were made for giving power to an executor of an inventor not domiciled in the United States at the time of his death to apply for and receive a patent."

Subsequently to the passage of this act to which I have been referring has been passed an act regulating the rates of fees for assignments of patents; but those above referred to are the principal statutes relating to the general patent laws which have been enacted from 1870 up to the present time.

There are certain design statutes or a design law which began about 1848, I think, which is substantially the present law, with a few amendments, such as the one made in 1902, providing that designs should be granted only upon ornamental devices. I do not believe it is necessary to discuss that law at this time.

I have also a short description of the procedure in the Patent Office, if you wish me to read that.

The CHAIRMAN. We would like to have that.

Mr. TENNANT. (Reading:)

"PROCEDURE AND PERSONNEL OF THE UNITED STATES PATENT OFFICE.

"The personnel of the Patent Office comprises the commissioner, a first assistant commissioner, an assistant commissioner, a board of examiners in chief consisting of three members, a chief clerk, two law examiners, an examiner of interferences, an examiner of classification, an examiner of trade-marks and designs, 43 principal examiners, and 334 assistant examiners.

"The commissioner is the head of the bureau and his duties are both judicial and administrative. In the absence of the commissioner the first assistant commissioner or the assistant commissioner assumes his duties, and at all other times they perform such duties of the commissioner as the latter may delegate to them.

"Each of the 43 principal examiners is in charge of a division of the office consisting of from 6 to 10 assistant examiners, a clerk, and a stenographer. The principal examiners and their assistants make an examination of the prior patents, domestic and foreign, and publications on file in the office to determine whether the subject matter of an application is patentable, and it is the duty of the principal examiner to pass upon this question in the first instance. The principal examiners do not, as a rule, act on many cases independently of their assistants, their time being consumed largely in reviewing the cases with the assistant examiners in their respective divisions. The assistants examine the applications as to form and make the searches to determine novelty before reporting the cases to their chiefs. Each assistant examiner in this manner disposes of about 780 cases in a year on the average. It is understood, of course, that in this number the same application may be represented more than once if it is amended so as to require repeated reconsideration."

Of course, that number of cases is merely an average, because in some cases they have to take a week to read and examine a single case. We have a good many cases in which there are from 50 to 100 sheets of drawings and a hundred pages or more of specifications. Frequently they run up into hundreds of claims and sometimes up as high as a thousand claims. Those applications for patents, of course, take a man an exceedingly long time to examine; on the other hand, we have a large number of simple devices, such as articles of manufacture, in which the examination does not take so very long. This number of cases is, of course, just an average of the entire work of examination of the office. [Reading:]

"If an applicant is not satisfied with the decision of the principal examiner, he may appeal to the board of examiners in chief. From the board of examiners in chief an appeal lies to the commissioner, and from an adverse decision by him an appeal may be taken to the Court of Appeals of the District of Columbia.

"The examiner of interferences passes the first judgment upon the question of priority of invention between two or more applications for conflicting inventions. From his judgment an appeal lies to the examiners in chief, thence to the Commissioner of Patents, and thence to the Court of Appeals of the District of Columbia."

That is that long line of appeals about which you have heard so much.

The CHAIRMAN. Which appeal you wish to cut out?

Mr. MOORE. The appeal to the board of examiners in chief. To consolidate the board of examiners in chief with the three commissioners, thus forming a single appellate tribunal, so that all appeals will then lie from the decisions of the examiners directly to this board, without taking a year to first go to the board of examiners in chief and additional period to go to the commissioner before they can reach the court of appeals, as is now the case.

Mr. WILSON. How much time would it save a man on appeal, provided we had a board?

Mr. MOORE. Without the board?

Mr. WILSON. No; if we had one.

Mr. MOORE. The one we suggest to be established?

Mr. WILSON. Yes.

Mr. MOORE. It would save from one to two years, besides the expense of the appeal and attorneys' fees. That would be one fee eliminated for the inventor, and the fee for his attorney arguing the case before the present board. It would be a great deal of saving in expense to the inventor, and also, which is more important, a great saving of time. Of course, the court of appeals consumes considerable time in examining these cases. I would go further than that. I would have the decision of this proposed board final and not take it to the court of appeals except by writ of certiorari.

Mr. WILSON. I presume that is true.

Mr. TENNANT. Of course, if you have the appeals in the Patent Office final it would be a good thing to have the writ certiorari to a court. We really ought to have a safety valve by which anyone dissatisfied with the decision of the Commissioner of Patents could obtain a review by some court in order to prevent charges which are so liable to come up, unfairness upon the part of an official of the Government. If applicants have a court to go to from the ruling of the commissioner of course any charge of bias or dishonesty would have no standing at all.

Mr. MOORE. We would be very glad to have that appeal and relieve the commissioner especially of a great deal of responsibility. The commissioner now is really supreme. I do not know of a Government official that has more authority under the law than the Commissioner of Patents. He can set aside any results of that board of examiners in chief. He is the sole judge of the propriety of issuing anyone a patent. With a patent board down there he would not do that, but he can do it on appeal from three to one, and in a way he relinquishes part of his dignity by going onto this board—he steps down.

Mr. TENNANT. In patent law, interference proceedings are conducted as nearly as possible in conformity to the practice in the United States Federal courts in equity. The applications and preliminary statements are sworn statements by the applicants of the date on which they conceived the invention, when they disclosed them to others, when they made drawings of them, and when they reduced them to practice. The preliminary statements, together with the applications, are considered, in effect, pleadings in the case. The burden of proof is placed upon the junior applicant; that is to say, the last person to file an application; and the testimony is taken throughout the United States, usually—almost always—before notary

publics, in the same manner in which depositions *de bene esse* are taken in equity cases. This testimony is filed in the Patent Office and is required to be printed before final hearing of the case. A date of the argument is set, and the counsel for the applicants who are involved in interference appear and argue the case in the same manner as they would before a court of equity. Appeals lie from the judgment of the examiner of interferences to the examiners in chief; thence to the Commissioner of Patents, and from the Commissioner of Patents to the Court of Appeals of the District of Columbia, the same as in other cases.

Mr. ALEXANDER. You spoke about "interference."

Mr. TENNANT. Yes.

Mr. ALEXANDER. Explain how broad that term is and what it means.

Mr. TENNANT. An interference is a proceeding to determine the priority of the invention between two or more applicants who claim the same patentable invention. Before the interference is started the applications of the respective parties are examined, and at least one of the applications must have been found to be allowable throughout or must be a patent. The patentable claims of this application which may be read fairly upon the structures of the other parties are then suggested to these other parties, and a limited time—30 days, usually—is given in which they may make these particular claims. If they file an amendment to their respective applications, making these claims, the interference is started or declared. In declaring the interference each party is notified that an interference exists between his application and the application of "John Jones" or "William Smith," giving the name of the applicant and giving the name of the attorney who represents that applicant.

Mr. MOORE. But not the date.

Mr. TENNANT. But not the date of the filing of his application or any other data, except the very issue itself. Then the applicant is called upon within the period of 30 days—I got a little ahead of my story. At this time the examiner of the interference is notified by the primary examiner, who prepared these letters I told you about, of the existence of this interference, and the letter addressed to him notifies him also of the serial number, the date of application, and all the necessary data in relation to the parties. The examiner of interference, as a matter of fact, sends out the notifications which are prepared by the primary examiner, and stamps upon them the limitation of time in which a preliminary statement must be filed. Now, as I have said, this is a preliminary statement under oath by each inventor who is involved in the interference, and it must be made by the inventor, if he is living, under almost any circumstances.

If he is dead, the executor can make the oath; or if he is hostile to the assignee, the assignee is sometimes permitted to make the oath. In taking the proof in support of the allegations of this preliminary statement testimony will not be accepted to prove a date of conception or disclosure or reduction to practice earlier than the date alleged in his preliminary statement; that is to say, if he alleged that he conceived and reduced the invention to practice on the 1st of June, 1911, that, as a matter of fact, when he got into the taking of testimony

he could prove beyond doubt that he had actually reduced the invention to practice on the 1st of January, 1911, we would simply give him June 1, 1911, for his date unless he came in with a motion to amend the preliminary statement—in other words, to amend his bill—with a showing of good and sufficient reasons why the matter in the amendment was not originally presented.

Mr. WEBB. The preliminary statement?

Mr. TENNANT. The preliminary statement—the same as it would be in an equity suit.

We also have an examiner of trade-marks and designs.

The CHAIRMAN. Just a moment before you proceed further. What is the further status in reference to the trial of the interferences?

Mr. TENNANT. After the preliminary statements have been approved, there is quite a complicated practice. Parties are given a period of 30 days in which they may file motions. These motions in the case are, first, motions to dissolve the interference, and, second, motions to amend the issue of the interference. The motions to dissolve the interference are divided into four parts: First, that there has been informality in the declaration of the interference; that is to say, the claims proposed are too vague and indefinite to enable the parties to determine properly who is the first inventor. Second, that one of the parties has no right to make the claim; that is to say, that the issue does not define the invention of one party, while it does define the invention of the other party. Third, claims having different meanings in the case of the different parties, which is to say, although the language of the claim might read properly upon the structures shown by the different parties, in so reading different meanings must be given to the words. And, fourth, that the claims are not patentable to anybody, because anticipated by prior patents or publication. The motion to amend is to add claims taken from the other party's application or another patentable claim differing from the claim first in issue. The rules permit amendment to that extent. These amendments are presented before the examiner of interference and, if found to be in proper form, are transmitted to the primary examiner for determination, and I might say that appeals lie from the adverse decision of the examiner on motion for dissolution and on motions to amend to the board of examiners in chief and to the commissioner.

Mr. WEBB. Is not that somewhat of a cumbersome system?

Mr. TENNANT. It is exceedingly so. Interlocutory procedure in interference cases could be simplified considerably if it were changed to correspond to the equity system of demurrer or plea.

Mr. ALEXANDER. Now, is it not true that on account of this involved system that parties who wish to defeat a patent sometimes resort to all the motions and different pleas before the office to delay the issuance of a patent?

Mr. TENNANT. Yes; they do it very frequently.

Mr. MOORE. About the same as they do in courts in practice. That is all to be deplored, but we can not stop it at the present time.

Mr. ALEXANDER. Does it require legislation to do that, or have you authority to revise your rules of practice?

Mr. MOORE. We could revise any rule not consistent with law, but in that matter I do not think we could do it.



The CHAIRMAN. You can not cut out the appeals without the statute.

Mr. ALEXANDER. It is not desirable to cut out appeal. But in the rules of practice I suppose they are authorized to formulate under existing law, and whether those rules could not be amended so as to avoid much of this delay, is the question.

Mr. MOORE. I do not think that there could be without additional legislation on the part of Congress.

Mr. TENNANT. The rules have grown through a long period, based upon experience of a great many years. For example, these rules referring to the dissolution of interference date clear back into the sixties before the passage of the act of 1870, and are almost in the same form now as they were in 1870 in relation to the declaration of the interference and the dissolution of the interference; that is to say, interlocutory procedure.

Mr. ALEXANDER. Do the statutes prescribe anything about it?

Mr. TENNANT. The statutes do not prescribe anything about interlocutory procedure at all.

Mr. ALEXANDER. Very well. Now, these rules may be amended, may they not, just like the rules of a court?

Mr. TENNANT. Yes; they can be amended.

Mr. ALEXANDER. To facilitate the trial of these cases?

Mr. TENNANT. I do not know whether, if amended, they would facilitate the trial of them or not. It is rather a difficult proposition. You see, no matter how thoroughly a case is searched, the question of patentability is one which can not be absolutely determined. It depends to some extent upon the attitude of the person who is examining the case. Claims are not drawn like renter's leases, to define metes and bounds, by particular stakes. Claims are drawn not ambiguously, but in broad terms to include analogous mechanical structures, to prevent others from almost copying the invention. The question of the patentability of those claims ought to be settled of course before the parties are put to the expense of taking testimony. Furthermore, that rule for amending the issue is for the very purpose of permitting parties to try their entire case.

Up to a comparatively recent time the rules permitted only an amendment to issue by taking claims from the application of one of the other parties, and it sometimes happened that after a case had been tried out through the entire gamut of tribunals, from the examiner of interference to the Court of Appeals, it was found that there was a broader invention in common to the two parties than had been presented by the claims in issue. Two of those cases went over to the Court of Appeals of the District of Columbia in the same year, and they held at that time that where an interference had been declared upon subject matter common to two applications and decision duly rendered, that that would settle the case for all time. Very shortly after that the rule permitting amendment of the issue was broadened so as to permit the parties themselves to formulate and present claims to common subject matter, as broad as the common subject matter could be patented, in order that they might try out the entire issue in a single proceeding. You see, to do away with that interlocutory procedure would work a considerable hardship upon the applicants themselves—that is, upon the inventors. For

instance, if a party had tried out his interference on too narrow a claim and took his patent out on that, and the other party should come in and by some hook or crook get through broader claims than those of the original issue, the former would still have a lawsuit on his hands which ought to have been tried out in the preliminary stages of the interference. And, again, parties frequently, when they come to interference, will make a vigorous search to discover some are or something or other that the examiner has overlooked. As, for instance, trade publications or periodicals which are not accessible to the office, and find there a description of the invention prior to the date of either applicant; in such case, of course, neither party could get a valid patent. So they come in with their motions for dissolution, asserting that this issue is not patentable in view of such publications. They also search the files of the office for references which the examiners may have overlooked. The examiners are not infallible by any means. So that if you force them to try out the issue of priority without this interlocutory procedure in many cases you would require them to spend a great deal of money in deciding a question which, after having decided, would result in the improper granting of patents on something which was not patentable. Those motions for dissolution do dispose of quite a great number of cases.

Mr. ALEXANDER. Just on the ground that the subject matter is not patentable?

Mr. TENNANT. That the subject matter is not patentable.

Mr. WEBB. You have one man to pass upon the patentability, have you?

Mr. TENNANT. We have 43 different examiners.

Mr. WEBB. In one case?

Mr. TENNANT. Oh, no; but one man examines each case—if it is patentable he allows it.

Mr. WEBB. Do any attorneys appear before you in person, and are you back and forth about it?

Mr. TENNANT. They can come in and interview the examiner.

Mr. WEBB. See him privately?

Mr. TENNANT. Yes; that is done every day.

Mr. WEBB. Have you gentlemen any system or any suggestion by which this method of settling these questions might be simplified?

Mr. MOORE. That is the broad policy of the office; that is, especially in the last few years. We have sent up here several amended suggestions, which were embraced bills, and were introduced and referred to the Committee on Patents, but the lack of time and opposition on the part of the patent bar—a small number of them—one of those bills have been passed except the one repealing the caveat law, which was a hardship upon the inventor. That passed and they are no longer fooled by that sort of thing. But the practice of the office could be simplified in many directions, and in these bills that have been introduced—

Mr. WEBB. Have you in mind any of those bills, Mr. Moore?

Mr. MOORE. Why, yes.

Mr. WEBB. I would like to read them.

Mr. MOORE. Yes; I think Mr. Kay here can give you the whole set.

The CHAIRMAN. Yes.

Mr. WEBB. You need not give them, Mr. Chairman.

The CHAIRMAN. Your report shows the bills?

Mr. MOORE. I report to the Secretary of the Interior. In the organic act, establishing the Patent Office, it was intended to be an independent bureau, but on the establishment of the Department of the Interior, in 1849, the Patent Office was added to it, having previously been in the Department of State; and I think the various acts indicate that. Under the statutes the Secretary of the Interior can not make an appointment in the Patent Office except on the nomination of the Commissioner of Patents. The commissioner is directed by law to report directly to Congress in the month of January of each year. Of course, as a bureau officer, I make the fiscal year report to the Secretary, and I make that rather voluminous for the reason that I can make recommendations in there, and if approved by the Secretary they get to Congress at a very early date, that report being made in September or October. My report to Congress is made in the month of January. We can not get in our expenses and all that and make the statistical part of it until the latter part of January, so in the case of a short session the recommendations I might make to Congress in my report would be lost. I therefore put my recommendations in the fiscal yearly report and gain the approval and assistance of the Secretary of the Interior, and by that means get all the matters before Congress in December each year.

Mr. ALEXANDER. I would like to suggest that those bills that are recommended by the bureau as a result of their experience ought to be seriously considered and acted upon early.

Mr. MOORE. They were considered by this committee, I think, in the Sixty-first Congress.

The CHAIRMAN. Here is a bill that has been recommended by the commissioner, No. 7710 [reading]:

The commissioner is hereby authorized to issue a certificate of correction in conformity to the records and files of the Patent Office whenever, in his opinion, a patent issued by the Patent Office does not conform to the records and files of that office. Such certificate shall be signed by the Commissioner of Patents, sealed with the seal of the Patent Office, indorsed upon the patent, recorded in the records of patents, and a printed copy thereof attached to each printed copy of the specification. Every patent so corrected shall have the same effect and operation in law on the trial of all actions for cause thereafter arising as if the same had been issued in such corrected form.

The CHAIRMAN. I will just ask you to explain that, Mr. Commissioner, to these gentlemen, stating why that is necessary.

Mr. MOORE. That is in my fiscal-year report for 1911, copies of which have been sent to all members of this committee. The Public Printer makes a great many errors.

The CHAIRMAN. We all know that.

Mr. MOORE. And of course these errors are fatal to a patent, which is a formal contract, and we must correct those errors.

We do it without authority of law, and it has been done for many years that way, and we want it legalized. And the examiners make errors. We are not infallible in the Patent Office by any means, and the commissioner corrects those errors. They are not of a very serious nature, except in the printed patents that come out; and we have to issue certificates of correction, and sometimes we have to reissue the patent. The patentee won't accept it, and, of course, he is sometimes right; it is not what he applied for. We seek by that

bill to have it legalized, and then we can correct all those errors which might be called minor errors. That is very necessary and very important.

The CHAIRMAN. What expense to the Government and to the Patent Office would you think that would save?

Mr. MOORE. We make these corrections now without authority of law. It would save expense where reissues are now demanded and granted and which could be cured by certificates of correction under the proposed bill. Possibly the Public Printer would be more careful. The number of errors which take place in the Government Printing Office are larger now than ever before. It may be because we have a greater issue every year—more business down there. I do not think he is to be censured severely, because in the rush of business in the Government Printing Office, especially during sessions of Congress and also by reason of the increase of business annually in the Patent Office, which is handling 70,000 applications a year and issuing 35,000 or more. We send these records right down as they are without making clean copies.

Mr. WEBB. The class of work is a little technical?

Mr. MOORE. Very technical. They do this work, however, remarkably well.

The CHAIRMAN. Now, referring to H. R. 8388.

Mr. ALEXANDER. I suggest that we hear these gentlemen on the general subject now, and then at some other meeting we can take up these bills specifically and have hearings on them to accompany the report.

The CHAIRMAN. This suggestion, Judge, which I was making just now, was for the purpose of getting into this record a list of these bills so that when you read the record it would be clearly before you.

Mr. MOORE. In relation to bill H. R. 8388 we find, in view of the great volume of business that is in the Patent Office to-day, the United States having issued about 1,025,000 patents, it is necessary that we shorten the time applications are held in the office. The main reason is that certain corporations and individuals still keep cases hanging in the office. That is well known, and we have instructed the examiners to get rid of those cases, but the applicants have the right of amendment within one year, and they take to the next to the last day of the year in each case just so as to be within the law. Each action by the office gives them another year, so that it is possible to hold the case in the office indefinitely, thereby extending, in a way, the period of patent protection. Whenever they make a slip and fail to amend within the year we hold the case abandoned and do not revive such applications, unless they can show, under oath, abject poverty or other good reasons covering the period.

Mr. WEBB. It gives unscrupulous lawyers a chance to bleed the client?

Mr. MOORE. Yes; it has that effect, but I do not like to criticize the patent bar too much.

Mr. WEBB. Is there any other bill? If not, we will proceed.

The COMMISSIONER. If you think of anything, Mr. Tennant, just make it known.

The CHAIRMAN. Here is a bill which Judge Brantley has introduced, and he asked me yesterday to see when it would be convenient for the committee to hear him. It is H. R. No. 10648.

Mr. ALEXANDER. The bills that have been introduced by you at the suggestion of the department, those are the ones we would like to have the record show.

The CHAIRMAN. There are two others, but I do not remember the number of them.

Mr. TENNANT. One relates to appeals.

Mr. ALEXANDER. No. 7609. That is a bill to amend section 482, and others.

Mr. WEBB. That is a bill that would tend to simplify your work?

Mr. TENNANT. I did not complete the answer to your question; that bears a little bit on that subject. I got so far as to say we had a complicated system of interlocutory proceedings in interference, and I think I had stated the procedure afterwards.

Mr. WEBB. Briefly, we would like to get it.

Mr. TENNANT. After these preliminary statements have been approved and interlocutory proceedings disposed of, then times are set for taking testimony in the case. The junior party is given two months in which to present his proofs, and the senior party a month in which to present his case; the junior party again is given 15 days for rebuttal. Of course, if there are more parties the times go on in substantially the same order: First, the case of the junior being from a month to two months, and so on, all along down the line. This testimony is taken in the same manner as testimony is taken in equity cases *de bene esse*—that is, before a notary public—by examination and cross-examination. The testimony is required by the law and rules to be sealed up by the notary public and sent to the Commissioner of Patents to be filed. After the testimony is presented the case is set for final hearing.

Mr. WEBB. But before whom?

Mr. TENNANT. The examiner of interferences.

Mr. WEBB. The primary examiner?

Mr. TENNANT. No; the examiner of interferences.

Mr. MOORE. That is a little court which does nothing else.

Mr. TENNANT. The examiner of interferences has a pretty large amount of business to transact. He has six or seven assistants, and they are working all the time deciding questions of priority of invention. At the hearing of these interference cases the parties are represented by their respective counsel, and the case is argued in precisely the same manner as an infringement suit in a United States district court. From the decision of the examiner of interferences appeal lies first to the examiners in chief. That is a court of three persons who are presidential appointees, who are required by section 482, Revised Statutes, to be persons "of competent legal knowledge and scientific ability." As a matter of fact the examiners in chief have each grown up in the office and have been entirely through the grades from fourth assistant to principal examiners. They hear the case, and the decision is rendered by the examiners in chief as an appellate tribunal. Their decisions are not printed and are known only to examiners of the division from which each appeal is taken. They are not general precedents, since the law gives the Commissioner of Patents the final decision as to all appeals within the office. His published decisions control the practice of the office.

Mr. WEBB. Have you only got one board like that?

Mr. TENNANT. That is what I am coming to. From the decision of the examiners in chief appeal may be taken to the commissioner in person, as the law provides. Such appeal is heard either by the commissioner himself or by the first assistant or the assistant commissioner, as may be assigned by the commissioner when the docket is called. It is a written decision. I might state that all of these decisions, which are made by the Commissioner of Patents, are written. Appeal lies to the Court of Appeals of the District of Columbia.

This bill 7609 provides for the merging of the board of examiners in chief and the commissioner and the two assistant commissioners into a single appellate tribunal which will hear appeals from the examiner of interference in interference cases, and from the primary examiners in ex parte cases; that is to say, where an application has been finally rejected by the examiner, appeal from his decision will go to this board of appeals and directly then to the Court of Appeals of the District of Columbia. In other words, there will be but the single appellate tribunal in the Patent Office.

Mr. WEBB. I think that would be a good timesaver and a labor saver, too.

Mr. ALEXANDER. Do most of these cases go to the Court of Appeals of the District of Columbia, anyhow?

Mr. TENNANT. No; they are cut out all along the line. The examiners in chief hear a great many more ex parte cases than the commissioner, and a comparatively small percentage of the cases are decided by the court of appeals.

Mr. ALEXANDER. Very well, then; if these two intervening tribunals should be cut out would not they dump a great deal of work on the District of Columbia Court of Appeals?

Mr. TENNANT. In cutting both out?

Mr. WEBB. Just unite the commissioner and deputy commissioners in this court with the three examiners.

Mr. ALEXANDER. That just cuts out one?

Mr. TENNANT. That just cuts out one; it makes a review, and in that review you would have the opinion of at least three of the tribunal, it taking three to make a quorum.

Mr. ALEXANDER. I see; that is a good point.

Mr. WILDER. Who would determine which three shall hear it?

Mr. TENNANT. Under the bill, I believe, it provides that the commissioner shall designate.

Mr. WILDER. How is the commissioner appointed?

Mr. TENNANT. He is a presidential appointee.

Mr. WILDER. A political appointee?

Mr. TENNANT. He has been for some years, but the present commissioner and the assistant commissioners are products of the office.

Mr. MOORE. Judge, if you will allow me, I have been in the office 28 years, and Mr. Tennant, I think, 20 years.

Mr. TENNANT. Sixteen years.

Mr. MOORE. He is a young man. Mr. Billings is the first assistant commissioner, and he has been in the office about 23 years. I was the first appointee from the inside of the Patent Office in its history of 122 years. They adopted that policy, thinking, doubtless, that a person with experience in that business, as in every other, would be more competent to pass these things than an outsider.

In regard to the personnel of the examiners, they all come up and grow up like "Topsy." They come into the office under very severe, rigid civil-service examination in higher mathematics, chemistry (organic and inorganic), physics, reading of mechanical drawings and writing descriptions of them in technical terms, also French and German. That is the examination when they enter the office. Most of our men come from the Massachusetts Institute of Technology and other similar colleges, and they have a very good foundation education to start with. After appointment they take a special course in general and patent law and pass the bar examination after they have been here three years. We have great difficulty in holding them, because the corporations take them out of the office, and they are going out now like sheep through a hole in the fence. I know that the General Electric Co. has some 16 of our men in their patent department, and it is the same with the United Shoe Machinery Co. and the International Harvester Co. and numerous other corporations and law firms. That is the way it goes all over the country, and they pay them good salaries; much better than the Government will probably ever pay. But it is quite necessary to hold that class of technically educated young men to the service. They are not of much account in the office until they have been in there probably one or two years and have learned the practice. Of course we have inventions in all the known arts. We have chemists and we have electrical men—experts and specialists in those subjects—and we distribute them around as far as possible to handle the arts in which they are specialized.

Congress increased the salaries of these young men quite materially. They had not been increased for 60 years—since 1848; but of course we could not hold them for a minute, and civil-service examination could not supply us with material to draw upon, because they would not take the examinations at the low salaries offered, and they went preferably into the employ of corporations. Upon my representations to the Committee on Appropriations they increased the salaries, although confronted with \$100,000 deficit. The argument was pretty strong. Therefore they now come into the office at \$1,500 a year.

Mr. WILDER. Is there not quite a surplus left over to the credit of the Patent Office?

Mr. MOORE. Yes; it represents the net earnings of the Patent Office after paying salaries and every charge.

Mr. WILDER. There is no appropriation as long as that is there.

Mr. MOORE. We have a net surplus every year except two or three. Back of 1870, when there were two panics, and at the breaking out of the Civil War there was no surplus. The next year there was a surplus, I think, of \$1,500, because they got to inventing on both sides, principally munitions of war. I have the printed records of all the Confederate patents. The Confederate commissioner of patents was formally in our office, Mr. Rufus F. Rhodes, and that brilliant lawyer, Judah P. Benjamin, was the attorney general in charge of it.

The CHAIRMAN. There is another bill.

Mr. TENNANT. May I reply just a little bit to Mr. Wilder?

The CHAIRMAN. Yes.

Mr. MOORE. There is so much of this in my head that I may digress.

Mr. WEBB. I want to say that this is very interesting.

The CHAIRMAN. I think so, too.

Mr. WEBB. The most of this committee, I presume, are more or less unversed in this Patent Office business, and we would like to get all of it in as much detail as we can, and these informal hearings are sometimes a great deal more valuable than the formal ones.

Mr. MOORE. There is an immense amount of red fire if you would start it, and it would result in a great deal of good. Of course, patents is a dry subject to the laity; they do not take to the subject.

Mr. TENNANT. What I want to state is in answer to your question, Mr. Wilder, about who should designate which three members of the proposed appeal board should sit in each case. The bill provides that the commissioner shall make this designation. Although he is a presidential appointee and designates the members of the board who shall sit on a particular case, and assuming he might select the three for the particular purpose, the decision would still be subject to review by the court of appeals.

Mr. WILDER. That is true. On the other hand, I have understood that your predecessor was not an expert in patent matters when he came into the Patent Office. While there might not be any objection to cutting out one of the boards, it does seem to me that this board of appeals in the Patent Office should not be one that anybody can cut out, except for delinquency, under any circumstances. Their position should be secure, and they should have the feeling that they can decide any matter in any way they want without interference from anyone. If we have a presidential appointee who comes in the office—the present commissioner is all right, and I do not know but what the previous one would have been, to the limit of his knowledge in the matter, but we are likely to have one that is not all right in the future, and it hardly seems to me that a presidential appointee to an office which has been a political football ever since I have known the Patent Office there should have the determining of the appellate board of the Patent Office. I have no objection to cutting out one. I would be sorry to cut out the honorable commissioner and let it go to the court of appeals, but it seemed to me that that was not quite the right solution of it, so long as our patent system shall absolutely remain above reproach, without any opportunities of saying the commissioner got corrupted this way or the other. It seems to me that the appointive element would be subject to criticism. The patent system has enormously to do with the well-being of our country, and it has built up our industrial system. The Patent Office is wholly underrated—you so esteem it?

Mr. TENNANT. Oh, yes.

Mr. WILDER. There has been a suggestion of some satisfactory way which could be made to cut out the one board. I do not object to that in the least. I was under the impression that the board of appeals is a permanent, fixed board. They can not be gotten rid of by civil service.

Mr. TENNANT. I think you are mistaken as to that. The board of examiners in chief are presidential appointees. They are generally permanent, as matter of history, but there is now compelling it.

Mr. WILDER. It is an unwritten law that the president shall not serve three terms. What we are up against in the future we do not know, but it is the unwritten law that they stay there. It is not



the unwritten law that he stays there; it is the unwritten law that he does not.

Mr. TENNANT. I can appreciate the force of your suggestions in that matter; but so far as we are concerned in the Patent Office, I think I can express the opinion of the commissioner and say we do not care how they shall be assigned or who shall assign them, so long as we have a board of the character you speak of. But as far as any criticism of the commissioner is concerned, he is in a great deal better position at the present time, because he can either take the case on appeal from the board and decide it himself or he can——

Mr. WILDER. But he embarrasses himself somewhat if he goes over the expert board. He does it right along. He has got to be sure he has a case. He is not only the expert of the board on that side but on this side, and that would get a man into a pretty close hole.

Mr. WEBB. A man who is corrupt would not care much for embarrassment.

Mr. WILDER. I say he has got this board on this side of him and that board on the other, and it is proposed to cut out this board on one side.

Mr. MOORE. That is the board with the three commissioners?

Mr. WILDER. No; cut them out, because they are absolutely independent of the commissioner. He has no control over them whatever, no more than he has control over Congress.

Mr. MOORE. Oh, yes; the commissioner is given the sole right and duty under the law to grant the patents. He can nullify any acts——

Mr. WILDER. I mean that decision—the decision is absolutely beyond the commissioner.

Mr. MOORE. It comes to the commissioner.

Mr. WILDER. As I understand it, it comes from the three and then he can go over them, with the chance of the District Court of Appeals going over him again. He is going to stop, I think, twice before he will go over that board of appeals.

Mr. ALEXANDER. Why not add the commissioner to this board?

Mr. WILDER. There is the unwritten law that the board stays there permanently, fixed and independent, and the unwritten law that the commissioner does not stay there.

Mr. MOORE. The commissioner as a member on that board would be embarrassed a great deal more. He could not accomplish a thing of the kind suggested.

Mr. WEBB. Three experts can override in the board of appeals the commissioner and his assistants.

Mr. WILDER. They have that precedent that they may not override. They may make adverse decision that the court of appeals may overrule, but the board of appeals stands and is known to be the three experts of the Patent Office, and as a rule more that the commissioner. Am I right?

Mr. TENNANT. Yes.

Mr. WEBB. But the power of the commissioner is now greater than it would be if this particular feature of the bill were adopted?

Mr. WILDER. I do not think so.

Mr. WEBB. Instead of having this sole power, he simply becomes one of the court of five members. Is not that your understanding, Mr. Commissioner?

Mr. MOORE. Yes.

Mr. TENNANT. Suppose you amend the bill this way, and designate the commissioner to preside, and that at least two members of the board shall sit.

Mr. WILDER. Eliminate that element and I will stand for it, but at the present time that board stands there fixed, and the commissioner must combat that. It is supposed to be understood throughout the country to be the expert board of the Patent Office, and certainly we have had commissioners who could not compare with that board of experts, although I confess there has been some doubt as to the expertness of that board; nevertheless, if it comes through and the commissioner goes over them he must face them.

Mr. WEBB. Does this new bill provide that the commissioner shall appoint the three associates?

Mr. TENNANT. It provides that he shall designate who shall sit.

Mr. WEBB. Designate?

Mr. TENNANT. Yes.

Mr. WILDER. Any three of the six?

Mr. TENNANT. Any three of the six; any three of them may constitute a quorum.

Mr. MOORE. That could be very well left out. It does not amount to anything at all.

Mr. WILDER. It seems to me that would be an objectionable feature.

Mr. ALEXANDER. The hour of 12 o'clock has arrived. Shall we continue the hearing?

Mr. TENNANT. I had pretty near finished up this reading. If you care you can put the whole thing in the record. [Reading:]

"The examiner of trade-marks and designs passes upon the registrability of trade-marks and the patentability of designs, and from his decision appeal lies to the commissioner and thence to the Court of Appeals of the District of Columbia.

"The examiner of classification is the final authority upon matters of classification of the various domestic and foreign patents and publications.

"The law examiners are the technical and legal assistants of the commissioner and assistant commissioners.

"The chief clerk has charge of the clerical force of the office.

"The assistant examiners are obliged to pass a rigid entrance examination in physics, chemistry, mathematics, technics, mechanical drawing, and French or German. The question in 'technics' are designed to show the applicant's general knowledge of the industrial arts, manufacturing processes, applied mechanics, etc. The examination in mechanical drawing is on the applicant's ability to read such drawings as are required in applications for patent. The principal examiners are appointed from the higher grades of the assistants, and consequently have, besides the qualifications necessary to pass the entrance examination, a considerable experience in the office practice. They are selected also with a view to their executive ability.

"The employees comprising the clerical force are required to pass a rigid civil service examination in stenography, typewriting, mathematics, rough draft, and composition.

"The salaries of the officials and of the remaining force of the office are as follows:

Commissioner .....	\$5, 000
First assistant commissioner.....	4, 500
Assistant commissioner.....	3, 500

Chief clerk .....	\$3, 000
2 law examiners, at \$2,750 .....	5, 500
3 examiners in chief, at \$3,500 .....	10, 500
Examiner of interferences .....	2, 700
Examiner of trade-marks and designs .....	2, 700
Examiner of classification .....	3, 600
43 principal examiners, at \$2,700 .....	116, 100
63 first assistant examiners, at \$2,400 .....	151, 200
78 second assistant examiners, at \$2,100 .....	153, 300
88 third assistant examiners, at \$1,800 .....	160, 400
110 fourth assistant examiners, at \$1,500 .....	165, 000
Financial clerk .....	2, 250
Librarian .....	2, 000
6 chiefs of division, at \$2,000 .....	12, 000
3 assistant chiefs of division, at \$1,800 .....	5, 400
Private secretary .....	1, 800
Translator of languages .....	1, 800
9 clerks of class 4, at \$1,800 .....	16, 200
9 clerks of class 3, at \$1,600 .....	14, 400
17 clerks of class 2, at \$1,400 .....	23, 800
96 clerks of class 1, at \$1,200 .....	115, 200
3 skilled draftsmen, at \$1,200 .....	3, 600
4 draftsmen, at \$1,000 .....	4, 000
90 clerks, at \$1,000 .....	90, 000
Messenger and property clerk .....	1, 000
90 copyists, at \$900 .....	81, 000
85 copyists, at \$720 .....	61, 200
4 messengers, at \$840 .....	3, 360
25 assistant messengers, at \$720 .....	18, 000
14 laborers, at \$600 .....	8, 400
45 laborers, at \$480 .....	21, 600
40 messenger boys, at \$360 .....	14, 400

Total number of employees, 934.

"The course of an application for patent from the time of its filing to the issue of the patent is briefly described as follows:

"An application for patent comprises a formal petition, a written specification describing the invention, including claims to the particular subject matter which the applicant alleges is his invention, a drawing illustrating the invention, an oath setting forth certain facts which are required by statute and rule to establish the applicant's prima facie right to a patent, and a filing fee of \$15. Models of invention are required only when the nature of the invention can not be understood, and the operativeness of the machine for which application for patent is made can not be determined, from the written specification and drawing, in which case models are required to be filed merely as exhibits, and are ordinarily returned after the case has been finally decided.

"Upon receipt of the application above described, it is placed in the Application Division, where the papers are inclosed in a suitable file wrapper, and the case thereupon assigned to the division in which analogous inventions are classified. The fee is placed in the hands of the financial clerk, whose duty it is to record the same and thereafter to deposit it in the United States Treasury. The application having been received by a principal examiner is examined in respect to novelty of invention, etc., in the manner above described, being subject to amendment by the applicant as often as the examiner objects to informalities, or rejects a claim, until the application is allowed or a second rejection of the same claims has been entered, in either of which events action upon the case is closed. Finally rejected cases are appealable in the manner above pointed out. If the

principal examiner finds that the case is in condition for allowance, he so indicates by signing the file wrapper in the place designated and transfers the case to the Issue and Gazette Division of the office. The Issue and Gazette Division thereupon notifies the applicant of the allowance of his application and calls upon him for the payment of a final fee of \$20, which fee is required by law to be paid within 6 months from the date of allowance. Upon receipt of the final fee and recording of the same, the drawings are sent to the photolithographer for reproduction and the specification and claims are sent to the Government Printing Office to be duly printed in the form in which the patent is issued. The weekly issue of patents closes on Thursday, and the patents of that issue bear date as of the fourth Tuesday thereafter.

"There is in the United States Patent Office a division in which all assignments are recorded as is required by law. These assignments are recorded by book typewriters in books kept for that purpose and carefully prepared digests are made of each assignment for convenience in reference. Certified copies of the records of the United States Patent Office are accepted as authentic without further proof in all courts of the United States, and a great many of such records are furnished daily.

"There is also in the Patent Office a scientific library, in which are kept copies of patents of all foreign nations and also a large number of standard publications, periodicals, etc., which are used by the examiners in their searches upon the question of novelty of invention.

"It is the purpose of the Commissioner of Patents to cause the classification of the subject matter found in the scientific library at the earliest date possible in order to insure more thorough access to the publications of inventions which may be found in these published works and which have not been made the subject of patents. When this work shall have been done the validity of patents granted after a thorough search in the office will be more accurately assured.

"The bills which have been prepared by the Commissioner of Patents and which have been introduced in the House in this session all have for their purpose the remedying of defects which exist in the present law with a special view to facilitating the disposition of applications for patents and the prevention of abuse of the patent system, of which complaint is frequently made.

"The reason why these bills are believed to be necessary are stated at length in the report of the Commissioner of Patents to the Secretary of the Interior for the fiscal year ending June 30, 1911, a copy of which has been mailed to each member of this committee."

Mr. WEBB. I would like Mr. Tennant to come back and talk with us again. He and the commissioner seem to be very well informed on this matter.

(Thereupon, at 12.10 p. m., the committee stood adjourned to meet next Wednesday, January 17, 1912, at 10 o'clock a. m.)







# PROCEDURE UPON APPLICATION FOR PATENT

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## HEARINGS

BEFORE THE

## COMMITTEE ON PATENTS

U. S. HOUSE OF REPRESENTATIVES

vol. 2.

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JANUARY 17, 1912



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1912



COMMITTEE ON PATENTS.

HOUSE OF REPRESENTATIVES, SIXTY-SECOND CONGRESS.

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EDWIN Y. WEBB, North Carolina.

FRANK CLARK, Florida.

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ROBERT J. BULKLEY, Ohio.

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WILLIAM W. WILSON, Illinois.

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WILLIAM H. WILDER, Massachusetts.

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## PROCEDURE UPON APPLICATION FOR PATENT.

COMMITTEE ON PATENTS, HOUSE OF REPRESENTATIVES,  
*Wednesday, January 17, 1912.*

The committee met at 10 o'clock a. m.

Present: Messrs. Oldfield (chairman), Alexander, Callaway, Witherspoon, and Wilder.

Present also: Hon. Edward B. Moore, Commissioner of Patents, and Mr. Frederick A. Tennant, Assistant Commissioner of Patents.

Mr. MOORE. Mr. Chairman, I sent you up some reports of the Patent Office—my annual report to the Secretary and other Patent Office publications.

The CHAIRMAN. We have received them. Mr. Tennant, will you continue your statement?

Mr. TENNANT. I hardly know what to take up this morning. In the matter of the patent system, I think I gave you a pretty full history of general patent legislation from the beginning of the patent system up to the present time, at the last meeting.

The CHAIRMAN. Then how would it do, gentlemen, to take up with the commissioner those bills which are known as the commissioner's bills and let him explain why he thinks they should be enacted?

Mr. WITHERSPOON. Are we going to have another meeting for Mr. Moore to appear before us? He spoke of making a statement at the next meeting.

Mr. MOORE. That was with relation to the foreign patent laws as compared with the patent laws of the United States. I have not yet finished the preparation of it, as it covers a great deal of ground.

Mr. WITHERSPOON. I won't be able to hear you but a few minutes this morning; I have another committee meeting at 10.30. At the same time, I should like very much to hear Mr. Moore's statement.

Mr. MOORE. I think, Mr. Chairman, that all I have to say in regard to these bills is in my report, where the reasons for their enactment are quite fully set forth. In that report I take them up under their present numbers, as they were reintroduced at the present Congress.

The CHAIRMAN. Now, gentlemen, Mr. Dyer, who is the head of the patent department of the Edison concerns, wants a hearing at the next meeting. What do you think about it? Mr. Townsend, of New Jersey, has introduced a bill and Mr. Dyer has expressed a wish to be heard on it next Wednesday.

Mr. ALEXANDER. What is the bill about?

The CHAIRMAN. About picture films, I think. The number is H. R. 15263.

Mr. ALEXANDER. Is there anything else to interfere with his request?

The CHAIRMAN. Judge Brantley, of Georgia, wants a hearing on H. R. 10648.

Mr. ALEXANDER. I move a hearing be granted to Mr. Dyer on H. R. 15263.

The CHAIRMAN. It has been moved that we have a hearing on H. R. 15263 at the meeting next Wednesday, and that Mr. Dyer be granted a hearing on that bill. All in favor say "aye."

The MEMBERS. "Aye."

The CHAIRMAN. The "ayes" have it. Now what about H. R. 10648? Do you suppose we could have both at one meeting? There seems to be no objection and the clerk will notify Judge Brantley and Mr. Townsend to appear next Wednesday in regard to H. R. 10648 and H. R. 15263.

Mr. ALEXANDER. I suggest that we have Mr. Moore and Mr. Tennant present at the consideration of these two bills.

Mr. OLDFIELD. Yes; certainly. I shall try to have Mr. Putnam, the Librarian of Congress, present.

Mr. MOORE. I would suggest Mr. Solberg, the register of copyrights, be invited. He is very familiar with all that legislation and the present copyright laws.

The CHAIRMAN. All right. Now, it seems that Mr. Moore is not ready with his statement this morning.

Mr. ALEXANDER. How about Mr. Tennant?

Mr. TENNANT. If you would like to have me, I could give you a brief statement of the manner in which applications go through the Patent Office, either to allowance or to final rejection. But, perhaps, the gentlemen of the committee are familiar with the treatment of applications and how they are handled in the Patent Office?

The CHAIRMAN. We should like to hear it.

Mr. ALEXANDER. The committee ought to take up the commissioner's report and study his recommendations with reference to the bills that he has suggested should become laws, and consider the report carefully and report the bills at an early date, so that they will stand some chance of passing, if we agree on them.

The CHAIRMAN. I do not see why we should not. There does not appear to be any reason why these bills should not be reported to the House and passed.

Mr. ALEXANDER. The sooner they are on the calendar the better show we will have to pass the bills.

The CHAIRMAN. Mr. Tennant, will you proceed?

#### **STATEMENT OF MR. FREDERICK A. TENNANT, ASSISTANT COMMISSIONER OF PATENTS.**

Mr. TENNANT. The procedure upon an application for patent is as follows: The application is filed in the mail room of the Patent Office and the drawing is sent to the chief draftsman for his official approval. The drawings are required to be of uniform size and to be made in india ink, so that they may be reproduced by photolithographic process. The drawing is examined by the draftsman as to its artistic qualities and to see whether it conforms to the requirements of the rules in regard to the illustration. It is then sent to the application room.

A complete application for patent consists of a petition, oath, specification, drawing, and first fee of \$15.

The specification is sent directly from the mail room to the application room, and the fee is turned over to the financial clerk. The application, having been received in the application room, is made of record in the books there, and a file jacket is prepared and the case is then transferred to the proper examining division, as near as the chief of the application division can guess where it should be classified. If it does not find its way to the right division, the examiner getting it will confer with the examiner who he thinks should have the case, and finally it will come to its proper resting place. If there is a conflict of opinion between the examiners as to just what division may properly consider the case, the matter is referred to the examiner of classification, who decides where it shall go.

After the application has reached the proper examining division the specification and claims are read first to find whether they are formal and conform to the requirements of the statutes, and whether the oath is in conformity with the law. Then the claims are taken up for examination and each claim is read carefully upon the specification and drawing to determine not only that it is an accurate description of the subject matter of the drawing, but also to determine the scope of the claims. Search is then made through the entire art to which this particular application relates. The search comprises a search through the United States patents, through the files of foreign patents, and through any books or literature which may bear upon the subject. The claims as read by the examiner are in the nature of a sort of series of mental pictures. A claim is not always confined to the exact kind of mechanism found in the application, but is broad enough to cover all equivalent devices. So that the examination of claims involves a great deal more than the mere examination to show whether the picture shown in the drawing is anticipated by a prior publication or patent. The field of search is exceedingly wide. In many cases it covers not only the particular art to which the invention is classified, but all analogous arts in which the same kind of a device might be used.

Mr. ALEXANDER. Will you illustrate right there what you are stating? Some concrete example.

Mr. TENNANT. Take, for example, radiators. As we ordinarily regard them they are heat-radiating units placed in a room for the purpose of warming that room. Now, the same structure of radiating units may be used in an automobile as a radiator for the engine; it may also be used in a refrigeration device for absorbing heat rather than radiating heat, so that a search for a steam radiator would not only carry us through steam-radiator systems, but radiators for engines and condensers, and through the art of refrigeration as well. The claims might be so broad as to be properly readable upon structures found in each of these various types of heat radiating and absorbing devices.

Take, also for example, the instance of a journal adapted for use primarily upon a steam engine. It might be used in thousands of places. There is in the Patent Office a class of journals, journal boxes, and shafting in which devices of this general character are classified. Of course, particular journal boxes may be found in devices in which the principal invention relates to a particular art. In such cases a patent, when issued, is cross referenced into the class of

journals, journal boxes, and shafting. The search for mechanical structures of this character, as well as general mechanical movements, is almost endless, and is only reached by a careful system of cross referencing.

Mr. ALEXANDER. Then, of course, if a capable patent attorney has the application he tries to make it broad enough to include all these various uses, is not that so?

Mr. TENNANT. Yes; that is what makes the searching of claims a very difficult proposition. The application contains not only claims to a broad combination of a particular subject matter, but specific claims to various details of construction, and each of these claims has to be kept in mind by the examiner as well as the broad claims, so that a search for an application containing, say, 100 claims might cause him to have in mind every moment a dozen or fifteen different combinations of elements which he has to be ready to apply to any patent which may come under his notice during the search.

In the searching under this system it is, of course, difficult to comprehend every time exactly what each claim's scope is, and it frequently happens that after an examiner has made an examination of the case he will, upon taking the case up for review, view the claims in an entirely different light, and find it necessary to reject the claims which he has already allowed.

We are sometimes criticized quite severely on account of rejecting claims in the second action that have already been allowed, but it is the policy of the office, under the direction of the commissioner, that the examination of each case shall be complete in the first instance and that subsequent examinations will necessitate rejection only upon such matters as have not been carefully reviewed in the first instance.

After the case has been examined the examiner writes a letter in which he rejects such claims as are met, either in terms or in substance, by the patents he has gathered during the search.

The applicant then has the right to controvert the action of the examiner or to amend his claims, and if the case is amended the examiner proceeds in the same manner to reexamine the case, and then treat each claim that has not already been allowed. The applicant then has the opportunity to amend again and to present his arguments against the position of the examiner. Each of the amendments are required by law to be filed within one year of the date of the last office action.

Now you can see that by waiting an entire year before filing an amendment the history of the case in the Patent Office may be protracted through a great number of years, and, as a matter of fact, the records of the office will show where a number of cases of this kind have occurred.

One of the bills now pending before your committee (H. R. 8388) has for its object the correction of this condition. It provides that applications shall be acted upon within six months after the last office action, instead of allowing one year for that purpose.

Mr. ALEXANDER. You think, then, that six months would be as short a period as ought to be given?

Mr. MOORE. It is a reasonable period. You will find that some of the attorneys will oppose it quite vigorously. Originally, as I believe you were told the other day, there was no limit on it, and then

the limit was fixed at two years, and remained at two years until about 1898, when it was cut down to a single year. Then the attorneys made quite a vigorous opposition to the cutting down of even that much time. I suppose in an attorney's office where a large amount of business is carried on six months is not a long time, because time passes pretty quickly where they are handling a large number of cases.

Mr. TENNANT. After the claims of an application are found to be allowable the case is passed to issue. The examiner signs the file, indicating the case is allowed, and transmits the file to the Issue and Gazette Division, where a formal notice of allowance is sent to the applicant, advising him that the case is allowed, and the final fee should be paid within six months or the case will become forfeited.

On the payment of the final fee of \$20 the drawing is sent out to be photolithographed and the specification sent to the Government Printing Office to be printed. The patent is then made up and issued. All this takes time, so that patents actually issue on the fourth Tuesday after the Thursday of the week in which the final fee is paid.

Now, if the examiner, on the other hand, finds the claims are not patentable, any or all of them, he repeats his rejection and eventually comes to the point where a square issue will be between the applicant and the examiner as to the patentability of the claims. The attorney will stand pat on the claims presented and make an argument why they should have been allowed. The examiner will then repeat his rejection and explain why they should not be allowed, and the case stands finally rejected.

After this final rejection by the primary examiner no further action can be taken before the examiner. The applicant has no further rights before the primary examiner. He may, however, appeal to the examiners in chief on the filing of a formal notice of appeal and the payment of a fee of \$10. From the decision of the examiners in chief, if adverse, appeal lies to the Commissioner of Patents in person; and if the commissioner's decision be adverse, appeal may be taken to the Court of Appeals of the District of Columbia.

Now, that is about the course of an application through the office—either to an allowance or final rejection and subsequent appeal.

The care which is taken in the examining system in the United States probably exists with no other country, save possibly Germany, and the scope of search in this country is undoubtedly greater than in Germany. In Germany the search comprises merely the records of the patents and publications for a period of 100 years. A short search is covered by the British examination, which covers the records of their office for 50 years only.

In the United States, however, the search covers all time and all places in the world, so far as literature can be gathered. As a matter of fact, I recall one case in which the examiner in charge of the division rejected an application for a patent on a thrashing machine or winnowing device in which exceedingly broad claims were made for the use of a blast of air for removing the chaff and impurities from grain on a quotation from the Bible, in which it appeared that

a hilltop was made smooth and the winnowers went up on top of the hill and tossed the grain in the face of a breeze.

Mr. ALEXANDER. I suppose that was to ascertain whether or not the principle was a new one. What is the final principle on which it is determined whether or not a device is patentable?

Mr. TENNANT. Well, in respect to the novelty of the case, a search is made to determine whether the invention is anticipated in the prior art. That is to say, whether another party has a patent upon the same invention or whether it has been disclosed in some printed publication.

Mr. ALEXANDER. That is to say, the identical invention or one with no patentable difference?

Mr. TENNANT. We also search the claims to find out whether the terms of the claims are met. The English language is so comprehensive that you can make the same terms mean a great many things. So the claims are not only searched for the invention, but to find if the terms are fairly met in the patents or publications shown in the art.

Many claims are expressed in terms which include "means" for performing a particular function and that "means" may be one of several different kinds. For example, if an applicant is claiming two parts of a machine and "means" for driving one directly from the other, that "means" might be a sprocket and chain; it might be a series of spur gears; it might be a friction drive; it might be a worm-and-pinion drive, or a great many other things. Now, a claim which reads broadly "means" of that kind is considered to cover all those means and the examiner searches to see if the terms of the claim can be read upon any of various different kinds of devices. The examiners are very skillful in making these searches, too, and it is a pretty shrewd applicant who will get away with claims which cover devices that are found in the patented art.

Mr. ALEXANDER. Would not much of that trouble of research be obviated if a more strict rule were in force with regard to specifications?

Mr. TENNANT. No; I do not think so, for the reason that the man who makes a pioneer invention is entitled to the protection of a pioneer patent. For example, when the first sewing machine was invented Howe found that he could sew by means of a needle that had an eye near its point. Needles of that sort had not been used prior to that time, so that his claim was for a sewing machine with a needle having an eye near its point. Now, he was the first to develop or conceive any device of that kind and was naturally entitled to cover the same broadly. Any other person might come along and make a sewing machine having a needle with its eye any other place on the needle, but he could not use a needle with its eye near the point. Howe was entitled to cover the needle with the eye near its point without reference to how it was operated, because that was his invention; his needle carried the thread down through the cloth and permitted rapid sewing, which could not be done by any other sort of needle.

It is quite interesting to note how many people tried to avoid Howe's patent by placing the eye in different parts of the needle, but none of them were successful. His patent was the basis patent of those which formed the sewing-machine art. Another was the

four-motion feed of Wilson. In that case the feed dog which carried the cloth forward was raised to engage the cloth and was moved forward to advance the cloth in a horizontal plane, retracted beneath the bedplate of the machine to disengage from the cloth, and drawn backward to its original position.

The combination of the needle having an eye near its point, with the four-motion feed of Wilson, and finally the take-up mechanism of Gibbs, comprised all the essential features of the modern sewing machine, and during the life of these patents there was a complete monopoly of the sewing machine for a considerable period.

These men established a new art. By the association of their various inventions in this combination they were enabled to put upon the market a machine which would sew many times more rapidly than the most expert hand needleworker. They had created something of enormous value and were justly entitled to the full protection accorded by the patent laws for their contribution to the advancement of the useful arts.

Now, there is one thing I wish to speak of in connection with the granting of patents. We are sending out from 700 to 1,000 patents each week. The Government Printing Office, in the press of business, makes mistakes, and we have to correct these mistakes. We have a rule by which they can be corrected under certificate of correction, if the error is a small one—a printer's error, for instance, or one which does not go to the vital part of the patent—that is, one which does not affect the grant or claims. If the claims are affected, the applicant may call for a reissue at the expense of the office.

Occasionally they insist upon such reissues and we grant them, but there is nothing in the reissue statute which provides for the granting of a reissue at the expense of the office. In a case which recently came to my personal attention, a mere printer's error in claims caused a reissue at the expense of the applicant—a considerable expense, too, there being a long specification and a large number of claims—merely because the printer had erred in printing the claim. He had pried the type. The reason that the applicant did not accept a reissue without fee was that he believed there was a possibility that such a reissue could not be maintained in the courts, in view of the fact that there is no specific provision therefor in the statutes. He therefore went through the entire form of paying the reissue fee, having new drawings prepared, a specification newly sworn to by the applicant, and actually went through all the formalities that would have been required had the error been made by himself instead of by the office.

There is now pending in the Patent Office a case in which a new patent is demanded for the reason that the assignee to whom the patent was requested to issue and to whom it did issue had died between the date of recording the assignment and the date on which the patent was granted. By some mistake the filing of certified copies of letters of administration was overlooked in the issuance of that patent. They were present in the office, but misplaced, and the patent issued to the dead man, his heirs and assigns. The attorney for the applicant now demands that a new patent be issued to correct that error, on the ground that there might be a possibility that the patent would be held invalid for that reason. There is,



however, no statute under which we can correct that error directly, and that is the reason we feel so severely the need of the passage of this act (H. R. 7710), providing for a certificate of correction to be issued by the commissioner to correct obvious errors. That is one of the bills now pending before your committee.

I might give another instance of the same thing. About a year ago there was a case which involved considerable money. The patent was a large one, containing 20 sheets of drawings and 25 to 30 sheets of specifications and claims. The printer made an error in one of the claims. It was such a bad error that the claim was almost meaningless—certainly ambiguous, and the applicant could not afford to take the claim as it appeared in the patent. He therefore requested that the patent be reissued at office expense, and the request was granted and the patent reissued. When the reissue came out it was found that that particular claim had been corrected, but that one of the other claims had been badly "pied." So we made a second reissue at the office expense, involving a total cost of \$75 charged to the office account. I could keep on with cases of the kind, which would show the committee the necessity for a statute for the correction of obvious errors which are made by the Patent Office or by the Government Printing Office. The Patent Office is sometimes at fault, but the blame for misprints and errors is more often chargeable to the Government Printing Office. If the entry of an amendment is overlooked in the office and some vital part of the patent is affected, the patent must be reissued.

Mr. ALEXANDER. This proposed bill would relieve the doubt as to the validity of the reissue?

Mr. TENNANT. It would as to corrections granted at the expense of the office to correct such mistakes. It would also make certain the right of the office to grant a certificate of correction, which it has been doing for years. I can not see any possible objection to the bill.

The matter of reissues to correct errors on the part of applicants is fully covered by section 4916, Revised Statutes, and the decisions thereon as to the granting of reissues are very clear, but there are no decisions which either hold that reissue granted at the expense of the office is valid or invalid.

Mr. MOORE. It has never been tested. In my opinion the proposed bill should be passed to relieve the office and to legalize steps that have been taken for the last 25 years or more. It has not been recently instituted; we have just fallen into a custom, but wish to avoid if possible any act that can be questioned.

Mr. TENNANT. If it would be proper for me to discuss a little further the matter of another bill which would result in great benefit to the office, I am prepared to do so.

The CHAIRMAN. Yes.

Mr. TENNANT. That is the bill relating to photographic copies of drawings accompanying applications for patent. (H. R. 7711.)

Under the present practice an application for patent consists of a petition, specification, and oath. fee, and a drawing. It is proposed by this bill to require, in addition to these papers, one or more photographic copies, as many as the commissioner may deem proper, as a part of each original application for patent, in which the invention is susceptible of being illustrated by drawings.

Mr. MOORE. I might say that this bill passed the House, and also passed the Senate with a slight amendment at the last session, but there was no opportunity for conference between the two Houses in the closing hours to adjust the difference in the two bills.

Mr. TENNANT. The difference between these bills was this: The bill as introduced and passed by the House provided for the filing of two photographic copies. As amended in the Senate it provided for such number of photographic copies as the commissioner may deem necessary. This is the only difference in the two. The only object of this bill is to place one of the photographic copies in the secret archives of the office, the draftsman's room, or such place as may be determined, in order that it may be in a different place than the division to which the application is assigned. Thus, at any time, reference could be made back to these photographic copies to insure the fact that the drawing had not been surreptitiously changed. The plan would also insure the accuracy of search. If a photographic drawing of this character were placed in the examining division together with the drawing, when the original drawing is sent out to be photolithographed there would be still a copy remaining in the files for reference. At the present time, where the patent is ready for publication, the drawing is sent out, as I have noted above, to the photolithographer. This takes time and the drawings are frequently out for from one to three weeks or more.

In each case where an application is found allowable and before it is passed for issue, the examiner makes a search through the drawings of the pending applications to find out whether or not any other case is pending which contains an interfering invention. This is what is called the issue or interference search. Now, if an original drawing is missing from the room when that search is made, of course, an interference may be overlooked and a patent granted to a person upon the same invention as is contained in the patent which is on its way to the printer. If a photographic copy of the drawing were in the examiner's file during the time in which the original drawing is out for reproduction it would prevent the improper issue of interfering patents of this sort.

Mr. MOORE. In other words, there would be less likely to be two patents issued for the same invention. It is almost impossible, at the present time, for an examiner to keep in mind the cases that have passed to issue, while they are still out, and the proposed system would give the examiner a complete record at all times to search from.

Mr. TENNANT. Then we have had one instance in which the necessity for this was forcefully shown. This case was the famous Heany case, in which one of the examiners of the office was bought up, apparently, by an inventor, who did actually substitute one drawing for another after the case had been filed. If we had had a photographic copy of the original drawing in a different place, it could have been checked up at once. As a matter of fact, it took a long investigation to determine that the substitution had been made and it was only when the parties were found out in regard to some other particulars that they admitted the substitution of the drawing.

Mr. MOORE. The substitution was so very well done that the board I appointed to investigate the matter reported to me on the second day of their investigation that the case was apparently regular in all

respects. I told them they should spend another day on it, owing to the great importance of the case, and about the middle of the third day they found a clue. Then the assistant examiner and the attorney in the case—a Philadelphia lawyer—came into my office and wanted to plead guilty, evidently with the hope of getting off with a light sentence. They were refused, and these two, together with the inventor, were indicted before the grand jury. The examiner and the attorney were sentenced to the penitentiary and served their terms, but the inventor escaped punishment.

Recently, however, we took up the applications of this inventor, which were involved in these frauds, and gave full hearing. He had sold his rights to a wealthy concern and they employed the very best counsel. The result of the investigation was that we refused to issue patents on the pending applications, and dissolved the interference in which he was involved with the very parties from whose applications had been stolen the matter fraudulently inserted in the questioned applications. He is now under indictment for perjury and subornation of perjury. The invention is the tungsten light, which experts have declared is worth at the least valuation something like \$5,000,000.

I will say that that is the only case in the history of the Patent Office where fraud has been perpetrated with regard to pending applications, but it is the very thing we wish to guard against by this measure. We must have this absolute check against any possible manipulation of the records, and deter anyone in the future from attempts which would lead to such grave results.

Mr. TENNANT. There is abundant opportunity for unauthorized modification of the drawings, for the reason that applicants and their attorneys are now permitted to order the original drawings sent to what is known as the attorney's room, in order to prepare their amendments. Having the drawings temporarily in their possession, it would be an easy matter for them to insert any change or improvement that they might wish upon which a claim might be granted. This change or improvement might be the inventor's own or some one else's. Many changes are innocently made to our knowledge; that is to say, the attorneys have ordered the drawings delivered to them, and seeing a little change necessary to obviate an inoperative claim, correct the same. There is nothing on the record to show that the thing had been noticed by the examiner, and the change is made. I had reason to call down an attorney recently for this very thing. He first denied it, but I proved to him from the record itself, and he had to admit it. The change, it is true, was a necessary one in this particular case and would have been permitted by the examiner if he had been applied to in the proper manner. This only indicates the necessity for having a check, so that, in case we have to, we can go back and see definitely whether the drawing originally filed with the application is identical with the drawing which accompanies the completed case.

Mr. ALEXANDER. It would prevent them from tampering with the drawings.

Mr. MOORE. This bill is aimed solely at safeguarding the records of the Patent Office. We have quite a number of safeguards of various kinds; for instance, by means of a perforating machine we

punch the date on every page of applications and amendments; this prevents any substitution of papers or parts of specifications, etc.

Mr. TENNANT. I think I have covered the manner in which the applications are handled and also the reasons for the bills now pending before the committee, except the bill for the elimination of one of the appeals within the office, and that was touched upon at the last meeting of the committee.

The CHAIRMAN. My only objection to the bill requiring photographic copies is that I do not see how these country lawyers are going to get these photographic prints made.

Mr. TENNANT. That can be easily attended to in this way: The applicants can file with their applications a request that the required photographic copies be made here. They would cost maybe about 15 cents apiece, not more than 25 cents, certainly. If the money to pay for them were sent along with the application, it would be sufficient. The office would attend to the rest.

The CHAIRMAN. How much additional?

Mr. TENNANT. I would say not more than 25 cents a sheet.

The CHAIRMAN. How many sheets are required?

Mr. TENNANT. For inventions of this character, say from applicants outside of the big manufacturing industries, an average number would not exceed two. Many of them would, of course, require only one sheet of drawings.

The CHAIRMAN. I do not see anything exorbitant about that.

Mr. ALEXANDER. No. You take the lawyers outside Washington—that is, except in the very large cities—as a rule, they do not pretend to prosecute a patent case here except through some local attorney. I know that I get requests from lawyers every week to recommend some reliable firm here who can take a patent case here.

Mr. MOORE. We did have, about 10 or 15 years ago, what was known as the blue-print rule, when we made blue prints of drawings; but we hadn't the proper facilities. They had an explosion down in the developing room, and so we did away with the rule under Commissioner Butterworth's administration. It was rather expensive, any way, and with the wholesale business under this pending bill, we could have it done by contract for less than 25 cents a sheet.

Mr. TENNANT. Our photolithographing is now done by contract.

Mr. ALEXANDER. I wish to suggest, Mr. Chairman, that at the meeting following the next meeting these bills, known as the commissioner's bills, shall be taken up for consideration. In the meantime each member of the committee should be furnished with a copy of the hearings and his attention called to the fact that these bills are referred to in the commissioner's report. Each member should be sent copies of the bills and his attention called to the fact that the commissioner has recommended their passage, and further that the committee will expect to act upon them at that meeting.

Mr. MOORE. The reasons are fully set forth in my report, but we can make a separate report in regard to each bill.

Mr. OLDFIELD. Do that, please.

Mr. MOORE. Of course, as the chairman knows, these bills were thoroughly discussed in the Sixty-first Congress, and hearings were given the patent bar for some seven or eight weeks at two different

sessions of Congress; and the committee, as I remember, favorably reported the bills, except possibly the six-months' bill (H. R. 8388); and one or two of them passed the Senate, but failed in the House. The photographic copies bill (H. R. 7711) passed both Houses, but there was a slight amendment, as Mr. Tennant has explained, and the conferees could not get together during the closing hours of the session.

The bill for the elimination of one appeal in the Patent Office passed the Senate, but was not reached on the House Calendar. In my opinion these bills are pretty free from objection.

The CHAIRMAN. Mr. Moore, will you and Mr. Tennant appear at the meeting next week?

Mr. MOORE. Yes, sir.

Thereupon, at 11.30 a. m., the committee stood adjourned to meet next Wednesday, January 24, 1912, at 10 o'clock a. m.





# TRADE-MARK LAW

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## HEARINGS

BEFORE

## THE COMMITTEE ON PATENTS

U. S. HOUSE OF REPRESENTATIVES

vol. 32

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JANUARY 24, 1912



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1912



**COMMITTEE ON PATENTS.**

**HOUSE OF REPRESENTATIVES, SIXTY-SECOND CONGRESS.**

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**EDWIN Y. WEBB, North Carolina.**

**FRANK CLARK, Florida.**

**JOSHUA W. ALEXANDER, Missouri.**

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## TRADE-MARK LAW.

COMMITTEE ON PATENTS,  
HOUSE OF REPRESENTATIVES,  
*Wednesday, January 24, 1912.*

The committee met at 10 o'clock a. m., Hon. William A. Oldfield (chairman) presiding.

There were also present Representatives Morrison, Webb, Alexander, Littleton, Callaway, Witherspoon, Henry, Lenroot, and Wilder.

Present, also, Hon. Edward B. Moore, Commissioner of Patents, and Hon. Thorvald Solberg, register of copyrights of the Library of Congress.

The CHAIRMAN. I believe there are some gentlemen here who want to be heard on H. R. 10648.

Mr. BRANTLEY. Mr. Chairman, this is a bill that I introduced. It is designed for the protection of the emblems and mottoes of certain societies in this country that have no protection under the law as it now exists. Their mottoes and emblems, as I understand the law, can now be used by any trade or manufacturing concern, who can put it on their goods and go before the country as if the particular society whose motto they have adopted was indorsing their goods; and this bill is designed to protect these societies.

This bill was drawn by Mr. Kintner, who is present, and who is thoroughly familiar with the facts leading up to its introduction and with the law governing the matter as it now stands, and I will present to the committee Mr. Kintner.

### STATEMENT OF CHARLES J. KINTNER, OF NEW YORK CITY.

Mr. KINTNER. Mr. Chairman, this is an amendment to section 5 of the trade-mark law, which governs the question of the registration of trade-marks. As you perhaps know, a trade-mark when registered gives a man a prima facie title to the trade-mark. It also gives him the right to proceed, under the Revised Statutes, for an infringement of his trade-mark.

The original bill, as drawn, provides for fraternal societies, excepts all fraternal societies, and does not admit of the registration of any marks or emblems of theirs, as the Odd Fellows, and Masons, and so forth.

Since the original bill was passed there have been two or three amendments for the protection of other parties, or other societies, and I will refer to them after I have read the amendment. The amendment occurs in section B of the bill, which provides what shall

not be registerable, which I shall refer to when I come to the amendment. Amendment B says:

Consists of or comprises the flag or coat of arms or other insignia of the United States or any simulation thereof, or of any State or municipality or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem—

That is the exception which I noted in the early part of my remarks. Now the amendment goes on—

\* \* \* of or any name, distinguishing mark, character, emblem, colors, flag, or banner adopted by any institution, organization, club, or society which was incorporated in any State in the United States prior to the date of the adoption and use by the applicant: *Provided*, That said name, distinguishing mark, character, emblem, colors, flag, or banner was adopted and publicly used by said institution, organization, club, or society prior to the date of adoption and use by the applicant.

Now, I think, gentlemen, you will see the great advantage and the necessity of this amendment, when I call your attention to the fact that there are hundreds of incorporated organizations and perhaps hundreds of institutions in this country, such as Yale, Cornell, Harvard, Princeton, and many others I might name, who have emblems and banners, which are in the nature of colors, etc., that might be adopted by any person as a trade-mark under the existing law and registered, and in that behalf I now refer you to a particular instance where that has occurred.

I am a member of the New York Athletic Club, which is the largest athletic society in the world. Col. Thompson is president of that club. Very recently, within two years, a member of that club (it is strange to say) has adopted its emblem, which is a winged foot, an artistic emblem, and in that emblem we have undoubtedly no property rights. We prize our emblem very much, and if this man is permitted to register this trade-mark he will be enabled to command the sale of all textile goods, cotton, and so forth, and that is the mark which we use in our own club.

He will be able to prevent A. G. Spalding & Bro., who are the largest manufacturers of athletic goods in the world, from using that emblem on their goods. A. G. Spalding & Bro. have been manufacturing goods with that emblem for 20 years for us and selling to us and putting that mark on it. Now, you must admit that is a pretty hard condition.

You can see, also, that there may be an occasion where the use of that emblem will appear in advertising circulars as very discreditable to us. I will leave to your imagination as to what cases that might cover—women's underwear and other things—all classes of underwear. That gives those men the privilege of selling our goods, with our emblem on it, everywhere throughout the United States, and in spite of the fact that Spalding & Bro. have been selling us the goods for the last 20 years. They have by courtesy the right to do it, and the same man might have had, by courtesy, the right to do it if we chose to let him have the right. He has the right, also, if we do not choose to give it to him.

Mr. LITTLETON. I am a member of that same club and have some communications in reference to this matter. I would like to know what the board of governors of the club has done.

Mr. KINTNER. The board of governors have done nothing, strange to say. The vice president of that club, in whose hands the matter was placed, has not acted in good faith, I am sorry to tell you. My

communications to him, advising him of the progress that I had made in this case (I was retained also, I should advise you, to procure the decision in the Patent Office)—my communications to him regarding the progress in this case were never transmitted to the board. Many of the oldest members asked me how this case was getting along, and I told them I had submitted a statement to the vice president, but he never did a thing.

Mr. BRANTLEY. I got several letters about it.

Mr. KINTNER. The men of the club who know all about it are all up in arms, but I will leave that to Col. Thompson.

Mr. BRANTLEY. You have no right under the law?

Mr. KINTNER. No; we have no right under the law. We have not a particle of right; it is just an intrinsic emblem. I will leave any further remarks to Col. Thompson, but that is the situation exactly as it is.

You see, this is not merely a question which is of interest to the New York Athletic Club alone. It is of interest to thousands of clubs throughout the United States. I communicated with Spalding & Bro., and they may have written to some of you gentlemen. They are bitterly opposed to it, of course, because it is usurping a right which they have had for 20 years. They never had a trade-mark, and can not now adopt it because this man has adopted it, and it is before the Patent Office. I learn from the vice president (who is now out of office) that he has two other applications in there for registration. I only know of that from the vice president. The Commissioner of Patents has probably held those up to find out what would be the result of this amendment.

The CHAIRMAN. If this bill were passed, it would prevent any person or official from using the emblem of your club or any other club.

Mr. KINTNER. That is it; any incorporated club.

Mr. BRANTLEY. And the registering of it.

Mr. KINTNER. And the registration of it. It calls for registration.

The CHAIRMAN. Even Spalding & Bro. could not use it without your permission.

Mr. KINTNER. No; Spalding & Bro. could not use it.

I should call attention to this fact: That if this man were permitted to register this emblem as a trade-mark, no member of the club or any other man could register this same emblem or badge, as, in fact, Robert Stole, who is a jeweler in New York, has made those badges for the club for the last 20 years; and Diegeson-Cluse have made the same badge for 20 years. Now, if any man should appear before the Patent Office and adopt that trade-mark, he can stop Stole, who has been using that trade-mark with the consent of the club, and he can stop Diegeson-Cluse.

#### STATEMENT OF COL. ROBERT M. THOMPSON.

Mr. THOMPSON. Mr. Chairman and gentlemen of the committee, I want to state in opening that the New York Athletic Club is an organization having between 4,000 and 5,000—approximately now pretty close to 5,000—members. It was organized over 40 years ago and has been the leading athletic organization in the country. It is known all over the country; it conducts games in many places, and has done an immense amount of work for athletics. But it is

only one of hundreds of such organizations that are scattered all over the land. There are 26 leading institutions, having a membership that will run up to forty or fifty thousand people.

Nobody ever dreamed that anyone could possibly have the right to take hold of these people, after they had adopted a particular badge or well-known emblem—that anybody could take hold of it and prevent its use. But that is what these smart Alecks have found they could do, and they have copyrighted the emblem of the New York Athletic Club.

It is so immensely unjust that I am sure you gentlemen need no urging that a wrong of that kind should be prevented.

It does not affect our people alone, but it affects people in every section of the country. There are institutions on the Pacific coast, in the Mississippi Valley, in St. Louis, Atlanta, Cleveland, Philadelphia, Cincinnati, Baltimore, and away up in Washington, and every one of those is found to be exploited by these people.

Mr. Littleton referred to the fact of there not being any direct action by the club. I confess with a great deal of shame that the president of the New York Athletic Club has not been attending properly to his duties. I have lived over in Washington, and the vice president, who had the matter in charge, for some reason (possibly because it was some good club fellow and probably because he was trying to benefit himself) did not take action, as he was requested to do, and my fellow club members (and I speak with a great deal of shame) told me to get busy and attend to my duty.

I am trying to do that, and I am sure I express the feeling of the greatest mass of the members when I say that we as a club are distinctly and bitterly opposed to having this thing copyrighted, because it deprives us of an emblem which we have used for 40 years.

Mr. WEBB. Is this the wing foot you are talking about?

Mr. THOMPSON. It is not exactly a wing foot, but the Mercury foot.

Mr. KINTNER. It is not a wing foot. This particular emblem was designed by Jake Gould, of the club. The Mercury foot has an ankle and the wing extends off to one side, but it is well known that so far as the trade-mark is concerned that makes no difference.

Mr. WEBB. How long have you used that emblem?

Mr. THOMPSON. I do not remember, but since 1888. We were using it then.

Mr. WEBB. And now you say some one is trying to patent it?

Mr. THOMPSON. They have adopted it as a trade-mark, and the effect of obtaining that trade-mark is that we can not go and buy goods, which we are buying all the time, with that mark on it. Take sweaters, for instance, that bear that wing foot. This man gets a trade-mark, and we can get those sweaters only from him, at his price. Now, we can get them from whom we please, but if his trade-mark is granted, this then becomes impossible and we must buy all of our supplies from him. What is true of us is true of the hundreds of clubs scattered all over the States. When the boys give an order to get their goods they will have to buy from that man, and it will be a tax on every organization of that kind in the whole land.

Mr. WEBB. Have you ever thought of getting a trade-mark for your club?

Mr. THOMPSON. We can not; the law will not permit it. We do not sell goods.

What we want to do is to prevent people from compelling us to buy from them. As a matter of fact, Spalding & Bro. have supplied us for a great many years. I do not personally care anything about Spalding & Bro. When I buy, I want to get the best terms, and I do not want to have any one concern hold me up and say I have got to buy from him.

Mr. LITTLETON. You say that it is a fact, Mr. Thompson, that if you allow this man to copyright this and secure a trade-mark, he can then force the patronage of the club for his goods, or force the club to abandon that emblem, and finally, as a matter of convenience, it would be better to make some arrangement with this fellow?

Mr. THOMPSON. It is unquestionably a very great monetary advantage to the party in getting this trade-mark. You can see in this one membership here of four or five thousand, a couple of thousand take great delight in appearing at meets and just as the different colleges have their devices (I have known men in college who take a great deal of delight in getting their "Y," "H," or their "N. A."), and some fellow comes along and gets out a trade-mark, and that institution has got to buy their goods from him or change their mark, and it should not be allowed.

Mr. LITTLETON. He is not entitled to it either because of use or ingenuity.

Mr. THOMPSON. He simply steals something that has been created by the other fellow.

#### STATEMENT OF REPRESENTATIVE WILLIAM G. BRANTLEY.

Mr. BRANTLEY. Mr. Chairman, there is just one additional thought in connection with this matter which I desire to call to the attention of the committee: Aside from the protection of this society in what belongs to it, a law of this kind seems to me to be necessary to protect the public.

For instance, here is the New York Athletic Club (a well-known club with a reputation in this country and abroad), and some man registers as a trade-mark their emblem, and his goods go abroad throughout this country as the goods approved by that club. His goods may be very inferior goods, but still to the public they are indorsed by this club, and he gets the benefit of this reputation of the club. So that the public will be benefited by this law and protected.

Now, Mr. Kintner suggested some moments ago an addition to the language that appears in this bill, but we will not press this amendment.

The CHAIRMAN. If you can make it any better, it would be well to let us have the amendment.

Mr. KINTNER. I would call attention to the abuses that are practiced on the public, and particularly in connection with the Red Cross, and I think there is one other. They have no penalty clause. They have a penalty clause over in New York, and I notice, for instance, that they are not enforcing that law very well. I see the Red Cross everywhere. Unscrupulous men adopt that and put it on everything—all kinds of drugs.

The CHAIRMAN. I would like to hear from Commissioner Moore on this bill now.

**STATEMENT OF HON. E. B. MOORE, COMMISSIONER OF PATENTS.**

Mr. MOORE. Mr. Chairman and gentlemen, I have studied this bill very carefully in connection with the present trade-mark law, and we find no objection to it whatever.

Mr. Kintner did suggest some amendments here in the penalty clause, but he has stated he is not going to press those. We have never been in favor of a penalty clause in connection with the registration of marks of trade, and it is not in our law.

What is happening here in relation to the mark adopted by the New York Athletic Club has been done in regard to the Society of the Red Cross. That, of course, should be protected to the fullest extent, and we did suggest, and the committee of Congress passed a law preventing the registration of the Red Cross. However, where they have been using a device for 10 years, we can not bar them under the law; but all other registrations of that mark are now prohibited by law and refused patents by the Patent Office.

The CHAIRMAN. Of the Red Cross?

Commissioner MOORE. Of the Red Cross; yes.

Now, in connection with this particular matter, I might say that this device which certain interests are seeking registration for in the United States Patent Office did not originate with them, and so far as we know is purely the property of the New York Athletic Club. They originated that mark, but there is nothing in the law that protects them, and I think an amendment to the trade-mark law as outlined in Judge Brantley's bill is a most excellent one, and in my opinion it should be adopted. It will protect not only this society, but in fact a great many others; and all societies who adopt emblems or distinctive marks of any kind should be protected.

I will say, in regard to this matter, that I am heartily in favor of Mr. Brantley's bill.

**STATEMENT OF MR. THORVALD SOLBERG, REGISTER OF COPYRIGHTS.**

Mr. SOLBERG. Although I came here at the request of the chairman in relation to the succeeding bill dealing with copyrights, a question arises at once here in relation to the application for registration in the copyright office for these various devices or emblems used by societies.

As I read this bill, for the first time, while it prevents the registration of the trade-mark, there is nothing in the bill establishing the right, by reason of the use, in behalf of the associations. Now, these associations, I believe, are not able to register their emblems under the present trade-mark law. They do not sell any goods, and while I understand the Patent Office has very liberally construed what may be an article of sale to which that mark or emblem might be attached, it would not cover all the class of articles to which it might be very advantageous on the part of the association to attach the emblem.

To give a concrete example, we have now pending an application for the registration of a mark of an association who are issuing certain insurance policies. The mark goes upon the policy, but I take it that the use there is not entitled to trade-mark registration.

Commissioner MOORE. No.

Mr. SOLBERG. The question, therefore, for consideration is whether in such an act as this, if it goes into effect, there might not be an opportunity to enable the registration of a claim on the part of an association or club somewhere, upon which registration there would be the convenience of bringing suit to prevent a use not authorized. This bill does not seem to go quite far enough to protect the interests of the association. If the associations have used the emblem for 20 years or 5 years, this bill would prevent any commercial firm from appropriating the emblem, but it would not go further; it would not enable the association to sue for the appropriation of the emblem, except so far as to prevent their trade-marking it. But even if a firm could not trade-mark an emblem, it could still go on and use it under this bill.

Mr. KINTNER. It would be protected under the State law of New York.

Commissioner MOORE. They could refuse to register it.

Mr. SOLBERG. But they could say, "Very well; you refuse us a trade-mark, but we will use it as our emblem."

Mr. KINTNER. The State law protects that.

The CHAIRMAN. How about the other States?

Mr. KINTNER. I do not know anything about that. For instance, we had a case where a colored man was caught with one of our badges on. We had him arrested, and he had to cease using it. The State law provides against the use of the badge in any shape, form, or manner as a badge.

Mr. SOLBERG. On what affirmative basis would the law act? This association would have redress solely under the State law in New York.

Mr. KINTNER. Yes.

Mr. SOLBERG. But nowhere else?

Mr. LITTLETON. You would have to prove the fact that you had used and adopted the emblem, and that the other person had subsequently taken and used it himself.

Mr. SOLBERG. You can only prove the use for that city. I speak of this because those cases are constantly arising in the copyright office, and we have felt compelled to advise that no registration made there can give the relief sought, that they should have the sole right to use the emblem. We can not investigate; we can only record the claim, and there may be no foundation for a claim.

Commissioner MOORE. You would not register in the coypright office a design of this kind?

Mr. SOLBERG. We have been. I must confess though, Mr. Moore, that we have been forced to take a rather compromising position, because we frequently and constantly state that we believe that no registration could protect a party in the sole right to the use. They argue that this is something not a trade-mark, because it is refused by the Patent Office for registration, because it is not applied to an article manufactured for sale. Yet it is a right which they wish to keep just as the Red Cross people attempted to register their mark, and many other associations have attempted to register those marks.

The question is whether, in relation to a measure of this sort, it might not be well to consider what registration might be conveniently provided for emblems of this sort, upon which you could conveniently bring suit under the difficulties which are pretty sure to arise, at least where there is no State law covering the case.



My suggestion would be to go one step further and include such marks as have been registered.

Mr. KINTNER. Mr. Chairman, I would say that one place they could register the emblem as a trade-mark is, for instance, where we have a club journal, which has a circulation of perhaps 10,000 members. Under the present law we can register the trade-mark for that club journal. But now the only use which we make of it is purely a fanciful use of the emblem, and it is of no value to us other than that, but we are protected in its use against any other publication, or can be protected. We are not, but we can if we want to register the emblem of that club journal.

Mr. SOLBERG. That protection extends only throughout the State of New York.

Mr. KINTNER. Oh, no. We can register the emblem of the club journal.

Commissioner MOORE. Yes.

Mr. BRANTLEY. Mr. Chairman, I think this bill as drawn meets the present difficulty. It might be desirable for some reasons to go further, but we are disposed to think it would only complicate the situation, and we want immediate relief now under a law that will prevent this other fellow from appropriating to his own use the emblem of some association.

The CHAIRMAN. We will next take up H. R. 15263, which was introduced by Mr. Townsend.

Representative Edward W. Townsend, appeared before the committee on behalf of the bill, and Mr. Ligon Johnson, of New York, appeared in behalf of the American Dramatic Society and others.

At the request of the parties interested, the hearing on the bill was continued until Wednesday, February 14, 1912.

The committee then went into executive session.





# PATENT OFFICE CERTIFICATES OF CORRECTION

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## HEARINGS

BEFORE

## THE COMMITTEE ON PATENTS

U. S. HOUSE OF REPRESENTATIVES  
"

ON

H. R. 7710

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JANUARY 31, 1912



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1912

COMMITTEE ON PATENTS.

HOUSE OF REPRESENTATIVES, SIXTY-SECOND CONGRESS.

WILLIAM A. OLDFIELD, Arkansas, *Chairman*.

MARTIN A. MORRISON, Indiana.

EDWIN Y. WEBB, North Carolina.

FRANK CLARK, Florida.

JOSHUA W. ALEXANDER, Missouri.

ROBERT J. BULKLEY, Ohio.

MARTIN W. LITTLETON, New York.

OSCAR CALLAWAY, Texas.

SAMUEL A. WITHERSPOON, Mississippi.

FRANK D. CURRIER, New Hampshire.

E. STEVENS HENRY, Connecticut.

WILLIAM W. WILSON, Illinois.

IRVINE L. LENROOT, Wisconsin.

WILLIAM H. WILDER, Massachusetts.

CLARENCE E. KAY, *Clerk*.

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PATENT OFFICE CERTIFICATES OF CORRECTION.

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COMMITTEE ON PATENTS,  
HOUSE OF REPRESENTATIVES,  
*Wednesday, January 31, 1912.*

The committee met at 10 o'clock a. m., Hon. William A. Oldfield (chairman) presiding.

Present also Representatives Morrison, Webb, Callaway, Witherspoon, and Lenroot.

Present also Hon. Edward B. Moore, Commissioner of Patents; Mr. Frederic A. Tennant, Assistant Commissioner of Patents; also Mr. George W. Whittlesey, Mr. W. W. Dodge, and Mr. Walter F. Rodgers, members of the patent laws and rules committee of the Patent Law Association of Washington.

The CHAIRMAN. Now, Mr. Whittlesey, I want to know if you desire to be heard on bill 7710. Have you a copy of it there?

Mr. WHITTLESEY. I have a copy of it.

The CHAIRMAN. If you wish to be heard, we will be very glad to hear you for a short time. I believe you represent the patent law and rules committee of the Patent Law Association of Washington.

Mr. WHITTLESEY. Yes. This seems to be a very desirable bill, Mr. Chairman. I do not see any reason why it should not be enacted into law. The only criticism that was made by the committee of the Patent Bar Association on this bill was to the effect that the bill does not state upon whose application the certificate shall be issued. It might make it a little clearer possibly if some such provision was inserted—that it should be at the request of the owner of the patent, because it would seem that the owner of the patent is the man from whom such a request should come.

Mr. WEBB. Do you think there would be any chance of an error in a patent in favor of the owner of the patent, as well as one that might be adverse to him?

Mr. WHITTLESEY. I could hardly see how it is possible.

Mr. LENROOT. Why not, Mr. Whittlesey?

Mr. WHITTLESEY. This bill relates to purely clerical errors, does it not?

Mr. LENROOT. Slight errors.

Mr. WHITTLESEY. Such errors as the commissioners can now make correction of.

Mr. WEBB. Why do you presume all those errors will be adverse to the patentee?

Mr. WHITTLESEY. They generally are. They are little typographical errors.

Mr. WEBB. Do you contend it is impossible that an error could be made that is favorable to the patentee?

Mr. WHITTLESEY. Well, I had not thought of that feature at all. Of course, it is possible in a narrow-minded way.

The CHAIRMAN. Mr. Lenroot at the last meeting raised a very serious objection to the practice of the Patent Office. He asked Commissioner Moore a question, and also did Mr. Wilder ask the same question, with regard to the Patent Office having the proof sent back for the purpose of correction or reading the proof. Is there any foundation for that sort of an objection? Or is that an objection to this bill?

Mr. WHITTLESEY. Well, that relates largely, it seems to me, to the administration of the affairs of the Patent Office.

The CHAIRMAN. Do the patent bar raise that question?

Mr. WHITTLESEY. It has not been raised at all in any discussion of the matter. In fact, there has been no serious objection to this bill in our committee at all, except it did not seem to be quite definite.

Mr. LENROOT. As bearing upon the query as to whether there would be any occasion for this bill if these proofs actually went back to the Patent Office for correction before the patent was finally issued (because they are now left wholly to the Government proof reader at the Government Printing Office), what have you to say?

Mr. WHITTLESEY. That might be an advantage, although I think it would involve an enormous expense, because it would involve the appointment of several additional proof readers at the Patent Office. I understand that these patents are printed from the original files, and in the case of patents that have been pending for a long time the papers get into a very confused condition, with the many amendments, changes of claims, and changes in specifications, and it takes a very expert person to go through those papers and determine what is actually the proper wording.

Mr. LENROOT. Who does it now?

Mr. WHITTLESEY. The Government Printing Office, as I understand it.

Mr. LENROOT. They have more expert persons down at the Government Printing Office than the Patent Office?

Mr. WHITTLESEY. I would not want to admit that, but they have a very expert corps of men who are experts in that line, and I understand they put the very best men on this kind of work. They take the original papers, and the patents are set up from the original papers.

Mr. CALLAWAY. It would not amount to anything more than just a double proof reading, and they have just as good proof readers at the Printing Office as you would have up there?

Mr. WHITTLESEY. Yes, sir.

Mr. CALLAWAY. And then they would send it back to be printed?

Mr. WHITTLESEY. One advantage would be that two heads are better than one, in all cases.

The CHAIRMAN. Mr. Dodge is president of the association?

Mr. WHITTLESEY. He is chairman of the committee. Mr. Rogers is president.

The CHAIRMAN. Mr. Dodge could not be here to-day?

Mr. WHITTLESEY. He would have been here, but he had to be out of town.

The CHAIRMAN. And asked you to be here?

Mr. WHITTLESEY. Yes, he asked me to come.

**STATEMENT OF HON. EDWARD B. MOORE, COMMISSIONER OF PATENTS.**

Commissioner MOORE. This is supplemental to what I said at the last meeting. Of course there is an immense volume of work that goes to the Public Printer each week, and they average throughout the year over 700 patents a week. After being allowed by the office and the final fees are paid they are sent down to the Public Printer, and they go right down in the original files with the amendments of the inventors or their attorneys. And some of these cases are carried along—they have been carried along for several years and get to be enormous records. They have what they call a specification room in the Government Printing Office, and the force are skilled men, and they have been there a great many years. It is about as technical and particular work as they have to do at the Printing Office as a regular thing. Of course there are times when they have technical work from other branches.

The CHAIRMAN. In what condition is this proof and application sent down? Is it typewritten usually or written with pen and ink or pencil or how?

Commissioner MOORE. All kinds of ways. It is the record just as it is put in there by the inventor, with the numerous amendments, and so forth.

The CHAIRMAN. Interlineations and all that?

Commissioner MOORE. Yes. They are mostly typographical mistakes (I want to call attention to that) that are made; but still there are other mistakes that are not, that will develop perhaps in the patent. Sometimes there are in chemical cases, for instance, mistakes—a wrong sign or something in the claim. Those are fatal. Of course that will be very readily corrected by a certificate, and although we correct a great many that we have not authority to do now, I will say we do correct them.

To Mr. Wilder's question last week, I wish to say that to have these proofs sent to the inventor in a large case, and frequently (I think Mr. Whittlesey knows this; they are all familiar with that work) we can not communicate with the holder of the patent. He may be in Europe. We have had two cases I know where the men have been in South Africa hunting big game, and it would mean a long delay, and we have such an enormous volume of business that we can not handle it.

I might say that we are willing to have this thing come in as now, only we want to have it legalized; that is the only reason for this bill. It has been done for years.

Mr. WEBB. Do you not, in fact, issue certificates of correction now?

Commissioner MOORE. Oh, yes.

Mr. WEBB. In what way are they brought to your attention?

Commissioner MOORE. By the inventor or attorney; and when it happens we issue a certificate of correction. It is these few typographical errors that creep into any case, and although we would have it proof read they would still be there.

Mr. WEBB. Do you find some errors in the office, independent of the inventor calling attention to them.



Commissioner MOORE. Yes. Frequently we find wrong words used by the inventor, and also errors made by the office and by the Public Printer.

Mr. WEBB. All of which you correct?

Commissioner MOORE. All of which we issue certificates of correction for.

Mr. WITHERSPOON. You say you have about 700 of these patents every week.

Commissioner MOORE. They average that.

Mr. WITHERSPOON. Could you give us an idea how many out of the 700 you have found mistakes in.

Commissioner MOORE. I can not give you the percentage.

Assistant Commissioner TENNANT. I should say around about 10 a week.

Mr. WITHERSPOON. Then the proposition is just this, supposing that to be correct: If your office would furnish men to take these proofs and read them all through so as to prevent errors in 10 out of 700 that would be much more expensive than to give you the authority to correct the errors when they are afterwards discovered. Is not that so?

Commissioner MOORE. I think so, sir.

Mr. WITHERSPOON. And so far as having your office to fix these up instead of the Printing Office: How long have these printers that have been doing this business of getting the patents in shape to be printed—how long have they been trained in that?

Commissioner MOORE. Many years.

Mr. WITHERSPOON. Have you anybody in your office that would have that same training and skill they require?

Commissioner MOORE. We have two or three, in what we call the Issue and Gazette Division. These errors creep in from all directions and go through three or four different sources, as I said—the Public Printer, the inventor, and the office. They do not amount to much, and this enables us to get rid of a vast amount of work without employing an additional force. I think to handle that great mass of cases in a year it would take at least 30 or 40 clerks additional.

Mr. WITHERSPOON. But it would take only a few minutes to correct errors when they do appear.

Commissioner MOORE. Yes. The Public Printer does not always discover errors; he discovers a few. It would sometimes take a book for one specification. The specifications run from 1 to 150 pages, printed on both sides of the sheet.

Mr. CALLAWAY. You do this anyway, without law?

Commissioner MOORE. This has been done for many years.

Mr. CALLAWAY. Then what do you want the law for?

Commissioner MOORE. We would rather train under a law.

Mr. CALLAWAY. If you have done it without any law for a good many years it is not a violation of law, is it?

Commissioner MOORE. I do not know that it is; perhaps custom makes good law.

Mr. CALLAWAY. I can not see the necessity for a law authorizing a thing that has been done for many years without objection.

Mr. WITHERSPOON. Suppose there is no authority for it; suppose it is done without authority of law?

Mr. CALLAWAY. If there is no authority for it, then the thing is not corrected; it is not corrected at all, and all these corrections made then are really not corrections and, I take it, would not stand in a court.

Mr. WITHERSPOON. If they are, that is not any reason why you should not fix it so that corrections may be made hereafter that would stand.

Mr. CALLAWAY. It just occurred to me that if they have been doing these things and it was not against the law, that then there would be no real reason for this.

Commissioner MOORE. We felt that there would be no objection to absolutely legalizing this, because some of these cases might come up in court.

Mr. WEBB. You do not know whether any have come up in court, do you?

Commissioner MOORE. No, sir. I think Mr. Whittlesey could tell us about that.

Mr. WITHERSPOON. There might be an error in a patent and it might be enjoined on the ground that they did not have authority to correct it.

Commissioner MOORE. I do not think it is generally known we have not the authority; the practice has obtained for 30 or 40 years.

Mr. WITHERSPOON. It seems to me in the original act it should have been given.

Mr. LENROOT. It rather shocks a lawyer's sense to think of a record going to the printer in that way.

Commissioner MOORE. Of course, if we can have all of these specifications in cases (in a majority they are voluminous cases)—if we can have all clean copy sent down, all of them to be copied and proof read and all that, it would take quite a force of clerks to do it, 30 or 40, I should say.

#### STATEMENT OF W. W. DODGE.

Mr. DODGE. The question was asked: "Has this question ever been up in court?" At least one case has come up, in which the court held it was without any legal effect whatever. That was the Edison electric-light case. A patent was issued with certain restrictions as to time, if I remember, and subsequently the patent was returned to the office and a certificate of correction was attached. Some time later it came back to the office and they asked that the certificate be removed, stating that they had asked for it in error.

The case went into court, and the question as to the legality and force of that correction was directly raised. The final decision of the appellate court was that it was absolutely without effect. The trial court, however, did give effect to it, saying it was an admission against interest—the original correction; and having once been made the patent was restricted to the shorter time stated in the certificate of correction. That was, as I say, overruled by the appellate court, and the correction was held to be absolutely nugatory.

Now I will say that this proposition of avoiding the repetition of printing, the excessive cost of correction, and all that sort of thing, is commendable in every way. I think every practitioner over the

country agrees with the principles of this bill, but I think all the practitioners agree that the bill is not sufficiently guarded.

The CHAIRMAN. Take the bill there and show how you would guard it.

Mr. DODGE. I am familiar with the bill. There is nothing here in the bill which requires anybody in interest to ask for that correction, and there is nothing in the bill requiring that any party interested in it shall have an opportunity to appear and show that the correction ought not be made.

Mr. WEBB. Do you understand there is anything that refuses any such permission, or anything to keep them from going to the commissioner?

Mr. DODGE. Not if notice be given to them.

Mr. WEBB. I am inquiring whether there is anything in the bill to preclude them?

Mr. DODGE. Not at all. But these corrections might be made by the commissioner without notice to the people who are really interested, unless some notice be given in a public way that he proposes to correct a patent. Now, take a correction of the office. This correction is made after the patent is issued, and when they are made you find a copy of the patent with a printed slip attached and a certificate of correction stating that the word "Kalamazoo," say, ought to be "Bay City," or something of that nature. Now, that might be considered unimportant, but there is in the office a record of an old case (I can not give the title of it)—an investigation of Examiner Wilbur as to the propriety of a certain action he had made—and it appeared a single letter had been changed in one of the ingredients of a chemical composition, and that single letter changed the entire scope and meaning of that patent—absolutely and utterly. There is no question but that this may very readily happen—that the change of a word in a claim, or two or three words in a claim, would completely change the meaning and scope of the patent.

These records of patents that are issued—every paper pertaining to the application for patents before the office from the time they are filed until the patent is finally issued and delivered—all these records are open to anybody who sees fit to go to the Patent Office and ask to examine them. There is very little safe-guarding of those records, especially of the kind there should be. I do not mean to criticize the office, because it has not the means of properly safe-guarding the files; but there are scores of men in there examining these papers (men and boys) every day, and it is impossible to keep an eye on what everyone is doing. It is, therefore, perfectly possible for some one to write in a word here or take a word out there, or even to take out a sheet and carry it off and substitute another sheet in its place. It is true that all those papers are handed back and gone over by a clerk to see if they are in proper condition; but he simply takes the papers and see that number so and so is there, and if all the papers are in the file it is considered perfect and handed in.

Now, I do not mean to say that thing is likely to happen frequently, but it is possible, and therefore I think the bill should be safeguarded by providing that before any correction is made a public notice be given in the Gazette or some other paper that would reach the parties generally in interest, notifying them they are going to correct the

patent in such and such a way, and let the man appear and show whether as a matter of fact such a correction ought to be made.

I agree heartily in spirit with what the commissioner desires to cover, and want to help this bill in every way I can, properly guarded; but I do think and I know that is the consensus of opinion among patent men that the correction ought to be guarded.

Mr. WEBB. Have you prepared such language as you want to insert in there?

Mr. DODGE. I have not. I can do that and insert it later if you want it.

The CHAIRMAN. Do you wish to make any statement, Mr. Rogers?

Mr. ROGERS. Mr. Dodge has expressed the views of the Patent Law Association. He was charged by the committee on laws and rules to appear at this hearing and express the views of the association, and he has expressed them, and we agree with them.

The CHAIRMAN. Mr. Tennant, do either of you have any suggestions to offer in regard to Mr. Dodge's proposed amendment in line 8?

Assistant Commissioner TENNANT. For the publication?

The CHAIRMAN. For publication in the Gazette. Have you any objection to that?

Assistant Commissioner TENNANT. No.

The CHAIRMAN. Mr. Commissioner, would you have any objection to that proposed amendment?

Commissioner MOORE. No; it is wholly immaterial.

The CHAIRMAN. What do you think, Mr. Lenroot?

Mr. LENROOT. I do not see any objection to that. I think the commissioner has a right to make it on his own motion.

Assistant Commissioner TENNANT. We now correct errors which occur in patents merely in the phraseology of the specifications and some, excepting material errors, in the claims. We very seldom correct an error in a claim for the reason that is the effective part of the patent and not subject to correction after the patent has once been granted. It sometimes happens, however, that the printers will pull the type or mix up words of the claim so it is utterly unintelligible, or so the claim would have a different meaning. In such kinds of cases we are required to advise the applicant. His way of correction is by way of a reissue. But those errors that are merely immaterial errors should be corrected by certificate of correction to conform to the records and files of the office as provided by the bill.

We have had at least one case in recent years in which an examiner inadvertently permitted a patent to go out with a claim in it in which a priority had been awarded to an adverse party in an interference proceeding. That patent still stands, although we have called upon the applicant to file a disclaimer of the particular claim. But we can not compel him to, and we can not correct that patent, although the claim is not his and has been adjudicated to be some one's else by the Court of Appeals of the District of Columbia. We ought to have a way to correct that sort of an error. That is an error chargeable to the office, and sometimes there are one or more immaterial errors or minor errors, an erroneous entry of an amendment; the direction is specific in his attorney's amendment, but the clerk perhaps entered it in the wrong place in the claim. Such things as those should be corrected.

The CHAIRMAN. When it is issued you make these corrections?

Assistant Commissioner TENNANT. No; it may be after the patent is issued. They usually come back very promptly within two or three weeks or a month, nearly all of them.

The CHAIRMAN. Suppose we passed a statute here embodying the suggestion of Mr. Dodge, would that delay the correction of these errors in any way if you have to publish in the Gazette?

Assistant Commissioner TENNANT. Well, it would delay it a little bit. Of course, we correct them very promptly. If the error is called to our attention, a certificate of correction is issued the following week, and if the publication is had it would take the additional time for the publication—probably not less than 30 days.

The CHAIRMAN. I do not want to get anything in this statute that will string out this business and postpone and delay it any more than under the present law.

Mr. DODGE. It would not extend the duration of the patent, not a minute.

Assistant Commissioner TENNANT. It would be a very short time, merely the time it takes for the publication.

The CHAIRMAN. Why would it not be possible, then (I make this as a suggestion to Mr. Rogers and Mr. Tennant and Mr. Moore), to agree upon an amendment, which could be prepared in the next few days and submitted to the committee.

Assistant Commissioner TENNANT. Mr. Commissioner, is that satisfactory to you?

Commissioner MOORE. That is satisfactory to me.

Mr. CALLAWAY. I would like to know what association Mr. Dodge represents—what is that?

Mr. DODGE. The Patent Law Association of Washington.

Mr. CALLAWAY. What is the Patent Law Association?

Mr. ROGERS. Mr. Chairman, shall I answer that? I should be glad to answer that, because I am president of the association.

It has a resident membership and a nonresident membership and comprises the practitioners in this city and all over the country. We have 96 members here and have, all told, 250 members. Next month we will have 275 and three months later 300 members, and we are exceedingly careful in our selection.

Of course, we blow our own horn in these matters, but candidly I feel confident that there is not an association in the country (and I feel the gentlemen here from the Patent Office will corroborate that) that has a cleaner membership. We have been especially careful in securing the membership, and even the resident membership practically represents all the States of the United States and all the patent lawyers in the United States. We are employed to get at these things, not only as representing the association of Washington here, but as counsel for the whole patent bar, as far as we can be. We have been requested by the patent-law branch of the American Bar Association to represent that association as well before this committee on this phase.

The CHAIRMAN. It is just a bar association, is it not?

Mr. ROGERS. Yes; the Patent Bar Association of Washington, but I wanted to give you some idea of the men we represent.

Mr. CALLAWAY. I do not think that is material; it is loading down the record with this stuff that does not appear to me to be material.

Now, then, just one further question: Is this Gazette a publication that is gotten out by the Patent Law Association?

The CHAIRMAN. No; by the Patent Office.

Assistant Commissioner TENNANT. In the Official Gazette is published the title, names, and one figure and five claims of each patent which is issued. It is a weekly publication. It also contains the decisions of the Commissioner of Patents—such as he chooses to publish.

The CHAIRMAN. It is the official organ of your office?

Assistant Commissioner TENNANT. Yes.

Mr. CALLAWAY. It occurs to me that would necessitate more red tape in the correction of these things, and it occurs to me that we have got red tape enough in connection with the Patent Office at the present time. I agree with the chairman that we ought not to make these laws in such a way that it would string these matters out.

Mr. ROGERS. It won't increase the red tape.

Assistant Commissioner TENNANT. We have not seen the necessity of any publication in the correction of errors which we have corrected in the past. But we have no objection, so far as the Patent Office is concerned, I am sure.

Mr. ROGERS. May I ask if those corrections are not made practically on behalf of the owner of the patent?

Assistant Commissioner TENNANT. Yes; always, so far as I am aware.

Mr. ROGERS. May I also ask if it is not true, in the past, that upon insistence of the owner of the patent, when there has been a mistake of that sort, he received a new patent?

Assistant Commissioner TENNANT. Yes.

Mr. ROGERS. I would insist upon that. That is one objection. You have got a garbled patent sent you. If you would go around and say, "I do not want that patent; I want the patent the way I had the record run," that would be very properly done and I expect it has been done by the Patent Office and done frequently, and that it would be done promptly. Nevertheless they may think it is an immaterial matter, and I do not want to take any chance of having any correction made without our knowing it.

Mr. LENROOT. If that certificate is improperly granted, does it not affect the validity of the patent?

Mr. ROGERS. Not the least.

Mr. LENROOT. Then what is to be lost?

Mr. ROGERS. It costs a great deal sometimes to correct a thing of that sort; it may cost a great deal of money to get it corrected.

Mr. LENROOT. But so far as the actual legal rights are concerned it would not affect the patent?

Mr. ROGERS. No; but I would rather not have it done without knowing it.

Mr. WEBB. I would like to ask Mr. Dodge if he will cite the reference to the case he referred to.

Mr. DODGE. The first case in which the certificate of correction was treated as an admission against interest was the Edison Electric Light Co. v. Buckeye Electric Co. (59 Fed. Rep., 691).

Now, in the case of the Edison Electric Light Co. v. United States Electric Co. (52 Fed. Rep., 300) the Circuit Court of Appeals, Second Circuit, was the case in which the certificate was held to be without

legal effect, and the patent was not affected in any shape, either by the correction or by the admission in asking for the correction.

Mr. MORRISON. Is not the object of this bill to give to the certificate validity, and is not the fact that it is to have validity the reason for the publication? If it is not to have validity, the publication is not necessary. Therefore, the necessity has not heretofore been manifest or existed, for that matter.

Mr. DODGE. For the publication?

Mr. MORRISON. Yes.

Mr. DODGE. Yes, sir.

The CHAIRMAN. Now, turn to 8388. This is another one of the commissioner's bills. That is to shorten the time from one year to six months, amending section 4894.

Mr. Rogers, do either of you want to be heard on that bill?

#### STATEMENT OF W. W. DODGE, ESQ.

Mr. DODGE. Mr. Chairman, I really did not come here prepared to discuss this bill to-day. I did not understand there was to be any consideration, except in a very informal way, of any of these matters, and I came up simply to look in.

But I will say this: The original law made no provision as to the time within which a response should be made to the final action on the application. The consequence was that cases were delayed for a great many years. The Woodbury Planer case, noted in Woodbury v. Kerth (11 Otto, 479), was, I think, 29 years in the office before the patent was issued. Meanwhile a number of parties had been manufacturing and selling the machine, and of course the patent coming at that time was very oppressive to those who had invested money, in ignorance of the application.

In 1870, when the patent statutes were revised under the general revision of laws, a two-year limit was enacted as the time within which a response should be made to any formal action in the case. That rule prevailed down to 1897, when Mr. Commissioner Seymour, acting under what he conceived to be authority vested in him as Commissioner of Patents (he being authorized to make rules not inconsistent with law, subject to the approval of the Secretary of the Interior, regarding the practice in the Patent Office), arbitrarily adopted a rule limiting the period to six months within which the response should be made. Some cases were held under that rule and other cases were not. It was a case where, as in many other things, kissing goes by favor. Those who had a good deal of influence got their cases exempted, and those who had not had the rule applied.

About that time, or a little later, the Supreme Court of the United States held in its decision in the famous Berliner case that the statute gave a man absolutely two years within which to respond, and the rules were promptly put back to the two-year status by Mr. Commissioner Butterworth during his second term.

Shortly after that a bill was introduced in Congress, passed the House, was favorably considered by the Committee on Patents in the Senate—of which Senator Platt, of Connecticut, was then chairman—and was about to be put through before the attorneys and manufacturers and people interested were advised of it or knew anything of it. It was then discovered quite by accident, and a very vigorous effort was

made to head it off. It made a number of other changes in the statute at the same time.

Reluctantly, Senator Platt gave a hearing. After asserting that none would be given and that the matter was closed, he gave a hearing, and the arguments presented were so cogent that Senator Platt, himself a good patent lawyer and thoroughly cognizant of the principles of procedure and practice, was persuaded and convinced that a six months period was too short, and he accepted the amendment presented by the Patent Law Association of Washington, and it was placed at one year, whereas it used to be two.

I mention this to show you that the matter was given very careful consideration and that but for force of arguments the situation would not have been changed from what that bill proposed.

We have, since the bill came up, sent communications to correspondents all over the country, and the clear consensus of opinion is overwhelmingly against a change from one year to six months. That is peculiarly true of those who are familiar with the practice before the office as distinguished from practice in the courts. Many of the practitioners do both soliciting and court work, and most of the members of the association are members of the bar, practicing in the Federal courts from one end of the land to the other, as well as before the Patent Office. Many of us devote comparatively little time to soliciting, but we are on the outside and know how these things actually work.

Now, you take these little, trifling cases of fishhooks, and mouse-traps, and things of that sort: they can be amended in a few minutes. Those are cases in which a man makes one invention and patents it, and never does it again, and they are handled by patent men who employ a large force of cheap clerks to grind the papers out, a good deal as you grind sausages out of the sausage mill. They put no consideration into the case and are content to get a piece of paper with a seal on it and get the fee.

The complicated, intricate cases, such as the Mergenthaler linotype machines, and other big composing machines, the electrical systems and apparatus, wireless telegraph, and matters of that sort—those cases are not handled by that class of men; they are handled by the high-grade attorneys—the best talent that can be found in the country. These men will have many cases, and you can't drop right off the reel whatever you happen to be doing and take up this case as it comes from the office, with a letter perhaps of 3 or 4 or 20 pages, with criticisms, citing oftentimes scores of patents, each of which has to be carefully studied out. The construction and operation of each of these machines has to be perfectly mastered, and the bearing of these machines on the claims made has to be carefully considered both from a mechanical and a legal point of view.

Now it takes time to handle a case of that sort, and the best equipped men in the country can not sit down and amend that case right offhand. It is a common thing, in those complicated, difficult cases, to spend weeks and even months of time in the preparation of the answer made to the rejections of the office. Those rejections cover matters of form, matters of invention, matters of description and of law. Then you have got to consider the office practice as to the form of claims, and you have got to keep in mind, back of all



that, that the courts and the office are not always in harmony as to how a claim should be worded, or what the legal significance is, and you have to keep in mind how that claim is going to strike the court.

Now, the class of gentlemen we communicated with are men practicing in the Federal courts and taking testimony all over the country hither and yon, and for weeks at a time as a rule, and to amend that case within six months would be an exceedingly difficult thing to do. A year is as short a time as it ought to be.

Not only that, but there are many cases in which it is necessary to construct devices to see whether they operate as the office says they do or whether they are capable of operation at all. Many cases involve electrical apparatus, and those in touch with the office practice know that it is necessary to study the principles involved to verify assertions by actual test and often to construct the apparatus and test it out.

In chemical processes the same way. Elaborate processes have to be carried on and are carried on at great expense to determine their bearing on those cases. Many of those cases, particularly chemical cases, come from abroad, and very frequently we can not very readily communicate with the parties; the parties are abroad or are foreigners, or we are dealing through other hands, and the cost that is incurred is often enormous, and we can not by any possibility get right after that amendment and get that case amended in six months.

The CHAIRMAN. Would not that be cured by the last few lines there, "they shall be regarded as abandoned by the parties thereto unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable"?

Mr. DODGE. I was just coming to that. I do not think it would. That lies absolutely in the discretion of the commissioner—the determination of the question of whether or not you have made a showing adequate to justify his holding that case not abandoned. Now, I do not care who the man is—I do not mean to be in any sense personal—I am speaking broadly of anybody who may be in that position. Whenever you place these matters in the discretion of any human being that discretion will bear unevenly on different persons. The possibility of making the proper showing, the knowledge and experience that will enable one to meet the requirements of the office, to know just what they are, and make a showing to satisfy the office, will vary with the different attorneys and with the different applicants.

We have too much discretion now; we want rules; we want to know what the practice is and know that the practice applies to John Jones just the same as it does to John Smith. We do not want to come asking favors, but want a rule, so that we can comply with it or not. If we know what we have to do, we can do it; but to have this discretion all along the line that is a point I will touch on in connection with other bills and not discuss any further now.

But the experience of the attorneys, as I say, from one end of the land to the other, shows that six months is too short a time, and a year is as short as it is possibly practicable to meet the requirements in, and I voice the sentiment of this association (and the correspondents run up into the hundreds) when I say it is opposed generally by those who have any familiarity with the Patent Office practice—among the better class of attorneys, that handle the important cases.

The CHAIRMAN. You say your association would oppose this bill. What do you think about the proposition to have the patent date from the date of the application?

Mr. DODGE. That might be well, if it could be guarded to meet the various contingencies that arise. That would depend very much upon the framing of the bill. One very great difficulty would be by reason of interferences. Now, an interference once declared may run for years, in spite of anything anybody can do looking to a final determination of the question.

For instance, I have in mind one group of interferences, which, if I remember rightly, run up to the number of 92, involving some 20 or 30 different applications. That was in the famous tabulator group, if you remember, Mr. Tennant. In the nature of things, each of these parties is at liberty to make all the motions—and the rules provide for many motions, as motions to dissolve—for one and another reason, which are almost inevitable, proper and necessary in an interference case in which so many parties are interested and such a vast number of issues or counts involved. These things run along for years, in the interlocutory stage many times. Then they go through the various tribunals after they come from the examiner, including the examiner of interferences, the board of examiners in chief, the commissioner, and the Court of Appeals of the District of Columbia, and ultimately the patent may be on its last legs when issued if it dates from the date of the application.

That class of cases ought to be excluded from any such provision of the bill to be presented to Congress, where there are questions of that kind.

Mr. LENROOT. Of course, the patentee would have an action for infringement from the date of the application?

Mr. DODGE. You mean if they dated it back?

Mr. LENROOT. Yes.

Mr. DODGE. You would have to modify the statute of limitations, which restricts recovery to six years prior to the filing of the bill or bringing the action. In the meantime everybody would be in a state of uncertainty.

Mr. LENROOT. That right of recovery of damages would be an advantage practically to those parties to delay?

Mr. DODGE. No; it is not now. As a matter of fact, we are anxious oftentimes to get a case to issue just as quickly as possible.

Mr. LENROOT. I gather from what you said the interferences are dragged along for a period of years.

Mr. DODGE. In spite of anything we can do to help it. In spite of the most careful and prompt action that the attorneys can take in the premises.

Mr. Rogers suggests to me that a bill has been proposed looking to the dating of a patent from the time of the application.

Mr. ROGERS. I understand that the suggestion has been made, and it will probably come before the committee in the shape of a bill, I am told.

Mr. DODGE. I should not want to go into that in the absence of knowledge of what the bill is and not having carefully considered it. I should say this, that there have been a good many plans proposed and I should think some one might work. One of those is to grant the patent to the first applicant as soon as the questions of novelty,

invention, and that sort of thing are disposed of, and then he goes out with the patent and these other people can stay in the office as long as they please and squabble and quarrel and do anything else they want to. When the man gets the patent they can contest it in court; they can question the validity and priority and anything else just as they can now, because after they have gone through these four hearings and the arguments in regard to the interference question a second patent may issue, or there may be a patent with which the prevailing party is put into interference, and either of which may prevail. Then they may go out with two patents, and either party can go into court and ask that the other party's patent be declared invalid. They may bring all these questions up in infringement proceedings also.

One word more on this six months' proposition, Mr. Chairman: Reducing this time to six months would not hasten a patent out of the office one blessed minute. The change from two years to one year has not hastened it one minute. The commissioner said here the other day (January 10 or 12, whatever day it was that the hearings on the patent law were given here) that they could come back and did come back; that these big corporations wait until the last day of the year, or next to the last day, and then put in an amendment which holds the case for another year, and that could go on indefinitely. That can still go on indefinitely (and if not I would like them to tell me why it can't) if the period is six months just as well as if it is a year. You have a right to respond to whatever action is made, and you have a right to respond twice to any single objection; and this proposed change is without any substantial basis, in my judgment.

The statement was made here in this recent hearing that in each case they hold back until the end of the year. That was a very incorrect statement, to say the least, and I challenge it. I challenge the office to show this committee the percentage of cases in which any such thing obtains, and I venture the assertion that you will find it an extremely small percentage.

The CHAIRMAN. You said yourself a while ago that the Berliner patent was held for 29 years.

Mr. DODGE. Not that; it was the Woodbury Planer case.

The CHAIRMAN. How about the automobile patent?

Mr. DODGE. George Selden; that was in there a great many years.

The CHAIRMAN. Is it not possible, under the law, to keep them there that way now?

Mr. ROGERS. They could be there just as long under the six months' provision.

The CHAIRMAN. It seems to me that you absolutely ought to make the patent begin within six months or one year after the application is filed.

Mr. ROGERS. You are getting nearer; and there will be a suggestion made along that line in bills, possibly very shortly.

Mr. LENROOT. Are unlimited amendments a matter of right?

Mr. DODGE. You are entitled to two amendments on each new reference—each new ground of rejection. You may make two amendments or responses, or you may not choose to make any amendments but may decide to argue the proposition. That is the law.

Mr. LENROOT. You are limited to two amendments?

Mr. DODGE. On each ground of rejection.

Mr. LENROOT. But if this would cut it down to six months, that would compel them to make the amendments every six months, and it would only take half as long as if it was a year?

Mr. DODGE. The practical working is just the reverse of what you assume. How does it work out? When you reduced the time from two years to one, many of the attorneys would get their cases back after hasty consideration. The examiners had not time to consider the cases as they should be considered; the attorneys were overloading the office, and they would get actions of the most ridiculous character from the office.

The rules state that a model is not required except where it is essential to an understanding of the case. That is one of the rules—that a model is not required unless you are specifically called upon to furnish it. Now, a letter was written that “a model is not required in this case.” That disposed of this case, so far as the examiner was concerned, and his work was brought up to date.

The present practice is to require another division. There is in the office what is called the Classification Division. It is attempting to classify all patents and to put each separate nut and screw and bolt under a separate class, and then to require you to divide and subdivide your cases to keep pace with this new classification. I have a case I would like to show you. So simple a thing as a gasoline-engine cylinder, made up of three parts, joined together by bolts, and with packing rings put in between the several parts. That case went along all right, and there was not any difficulty in treating it as a single concrete structure until a short time ago, and then we were required to divide it, on the ground that packing rings are examinable in another division or class. Now, without a packing ring the cylinder would probably be absolutely worthless.

But that is the thing we are getting now so the examiner can bring his work up to date; and you will find that just before the December returns each year the work is brought very close up to date, and then if you take the intervening time between December 31 and the 1st of February you will find they have gone back.

Now, then, my answer is to the effect that the six months' rule will not reduce the time two minutes.

And what is going to happen if you attempt to force action on these cases just twice as fast as they are doing now? It means that the office will be unable to handle these cases and give intelligent action. It means that they can not give to a case the consideration it ought to have with the force they now have and with the men going out just as soon as they become qualified to do the work properly, because they are sought after by people on the outside.

That reminds me of one more thing—the statement that these big corporations are not deliberately and willfully holding these cases back and taking action in each case on the last day of the year. As is evidenced by the statement made by Commissioner Moore here in his hearing on the 16th instant, these men are going out of the office now like sheep. In the report of that hearing he stated that no less than 16 men, to his knowledge, who had come from the Massachusetts Institute of Technology and other colleges, had been employed in the patent department of the General Electric Co. alone, and the

same is true of the United Shoe Machinery Co., the International Harvester Co., and so on.

What are these men there for? Simply to hold these actions off for a year or attend to the business they are paid for, or are they indiscriminately paid for leaving the office? It is perfectly absurd to think that they are.

Those men who were taken out of the office were men who were trained to do this work and understood it, and they were picked up by men on the outside for that reason and presumably are expected to earn their salaries, and it is absurd to say that they are standing around there and deliberately letting the cases go to the last day of the year.

Commissioner MOORE. I just simply want to say, Mr. Chairman and gentlemen, that we have been thrashing this thing out now for about four years, and we have heard this same stuff from beginning to end.

I want to say there are 10,000 registered patent attorneys in the United States, and it is safe to assume that there are not over 2,500 actually engaged in practice. We know that in the office. Now, in reference to the attorneys from the various parts of the country, I have letters written to me which I can produce if the committee wish that done, in regard to this matter.

Now, the question of this six-months provision, we know in the office (and I know) that for a period of 28 years in the Woodbury Planer case, that this corporation held this case back. And we have some there to-day that are 30 years old; and I passed, without regard to the patentability, the other day, some that had been in the office for 13 years, and let them take their chance with the court. That is the only way to get even with them.

I would strongly approve of the enactment of a provision that these patents should date from the date of the application, with certain reservations in cases where there are interferences, or to pass them through and let the interferences be fought out in the courts entirely. That is not a bad idea, and the suggestion has been made by many; so that if there were a few inventors claiming two or three things, we could pass them out of the office and let them go and fight it out in the courts and do away with the interferences.

The CHAIRMAN. You think that by reducing the period to six months it would reduce the time?

Commissioner MOORE. Unquestionably; there is no doubt about it in the world. I might also state the fact that there are to-day held in the office thousands of those drag-net cases. We know it, and every man in the patent business knows it. And these men who go out of the office and go into the large concerns are put in the shops to write specifications. They do not take out patents unless some rival concern files an application. The United Shoe Machinery Co. to-day have applications pending that have been in the office 8 or 10 years. There is a printed list of them, and that is only one corporation.

I do not think it is worth while the time of you gentlemen to go into this thing. The bill was favorably reported by your committee. I think with one exception, last year.

The CHAIRMAN. I think that is so.

Commissioner MOORE. It is more the question of internal administration than anything else that all of these bills call for; and I

really do not think the members of the patent bar should have very much to say about it. They relate to the administration of the office.

Mr. ROGERS. Our clients are concerned.

The CHAIRMAN. The public is concerned, too, Mr. Rogers.

Mr. ROGERS. Oh, yes.

Commissioner MOORE. One of the most eminent lawyers in Chicago, in a recent letter, four or five days ago, said he approved of every one of these bills. I have the letter on my desk and will be glad to give it to you. He said he especially approved of this six-months' bill.

Mr. DODGE. Does he practice before the office, Commissioner Moore?

Commissioner MOORE. In my opinion, I do not think it is hardly worth while to discuss this matter at all.

Mr. ROGERS. When Mr. Moore speaks of a case being in the office for 30 years, they were there under the two-year law, and there under the one-year law.

Commissioner MOORE. I do not say, Mr. Chairman, that the six months' rule is going to clear up all this stuff. We can not do just that sort of thing, but we can catch more of them. To help my assistants get these old dragnet cases to issue, I gave orders to four examiners to pass them to patent.

The CHAIRMAN. I would be glad if you would prepare for me a bill for consideration, dating the patent from the date of the application. I would like to introduce that bill myself. This 30-year business and 13-year business won't do.

Mr. ROGERS. I think you can get that suggestion from people outside in the practice themselves. We are not at all concerned ourselves in keeping these things in. As a matter of fact, we are urged to push these matters by the people who want to get out the patent, in nine out of ten times, except in the cases where people are developing machinery, and when they get this on the market it makes no difference if that patent is not issued until it is fully developed. That is the only possible case. But I do not recall in my entire experience of many years in the patent business of any instance in which I have been asked to do that thing deliberately—to hold up cases in the Patent Office; and the only cases in which it does happen are the cases of that sort where some work is being done.

The CHAIRMAN. I would like to make another suggestion to you, Mr. Rogers, and to Mr. Dodge also, and that is, the proposition will come before the committee soon for compulsory license, and I would like to have you prepare yourselves so as to discuss that question.

Mr. MORRISON. There is one question which Mr. Dodge asked the Commissioner of Patents that he did not catch, and that was whether the gentleman who wrote from Chicago is engaged in active practice before the Patent Bureau?

Commissioner MOORE. The letter which I have from this prominent lawyer? He is frequently a practitioner before the Patent Office.

The CHAIRMAN. He is the only lawyer?

Commissioner MOORE. He is one of them. I have two or three letters. One from Mr. Barnett, of Chicago, in which he especially

commends the six-months bill. Mr. Walker, of Walker on Patents, wants it reduced to one month.

Mr. ROGERS. That is not very surprising.

The CHAIRMAN. He is a very smart man, Mr. Rogers.

Commissioner MOORE. I must say that I think that when the Commissioner of Patents and his assistants, who have been in the office for many years, come up here and ask for a measure to relieve the office and protect the records, and all that—I do not think the practitioners before the office and the patentees should have anything to say about it.

That is all I wish to say.

The CHAIRMAN. You would not object to them getting a hearing?

Commissioner MOORE. We are in the office to represent the public and the inventors.

The CHAIRMAN. You would not object to them getting a hearing?

Commissioner MOORE. Not at all. They have been given hearings for the last year and a half.

Mr. MORRISON. And if you give them a hearing, should they not also get fair consideration?

Commissioner MOORE. Oh, yes.

Mr. MORRISON. That is what I understood.

Thereupon, at 11.40 o'clock a. m., the hearing was adjourned.

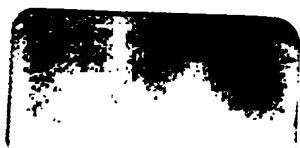












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